SENATE.

MONDAY, *January 15, 1917.*

The Chaplain, Rev. Forrest J. Prettyman, D. D., offered the following prayer:

Almighty God, the mention of Thy name is the recognition of the rights of men. We thank Thee that we have come to think of Thee not as the God of these States or of our Government but the God of all nations, and that we have come to know Thee not only in Thy relation to us alone but as we see Thee in the ever-increasing purpose that runs through the whole creation. We pray that we may fix our relation to all men on the basis of that righteousness which Thou hast revealed to us through Thy word, and that we may feel that our mission is a mission of kindness and peace and justice to all mankind. May we act under the inspiration of the great God whose throne is the habitation of justice and judgment. For Christ's sake. Amen.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Kansas suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Fletcher	Martine, N. J.	Sterling
Beckham	Gronna	Myers	Sutherland
Borah	Hollis	Nelson	Swanson
Brady	Hughes	Norris	Thomas
Brandegee	Husting	Page	Thompson
Chamberlain	Johnson, Me.	Ransdell	Tillman
Chilton	Johnson, S. Dak.	Saulsbury	Vardaman
Clapp	Jones	Shafroth	Wadsworth
Clark	Kenyon	Sheppard	Walsh
Colt	Lane	Sherman	Warren
Culberson	Lodge	Smith, Ariz.	Watson
Curtis	McCumber	Smith, Ga.	
Fernald	McLean	Smith, Md.	

Mr. ROBINSON. I was requested to announce that the Senator from North Carolina [Mr. SIMMONS] is detained at his home on account of illness and is unable to attend the session of the Senate to-day.

Mr. MARTINE of New Jersey. I rise to announce the absence of the Senator from Oklahoma [Mr. GORE], who is detained at his home through illness. I ask that this announcement may stand for the day.

Mr. CHILTON. I wish to announce that my colleague [Mr. GOFF] is detained from the Senate on account of illness.

I desire also to state that the Senator from Virginia [Mr. MARTIN] is detained on account of illness in his family. I will let this announcement stand for the day.

The PRESIDENT pro tempore. Fifty Senators have answered to their names. A quorum is present. The Secretary will read the Journal of the proceedings of the preceding day.

The Journal of the proceedings of Saturday last was read and approved.

SENATOR ELECT FROM DELAWARE.

Mr. SAULSBURY. Mr. President, I have the pleasure of presenting the certificate of election of Senator elect WOLCOTT, of my State, which I ask may be read and filed.

The PRESIDING OFFICER (Mr. HOLLIS in the chair). The Secretary will read the credentials.

The credentials were read and ordered to be filed, as follows:

BY AUTHORITY OF THE STATE OF DELAWARE.

TO THE PRESIDENT OF THE SENATE OF THE UNITED STATES:

Be it known an election was held in the State of Delaware on Tuesday, the 7th day of November, in the year of our Lord 1916, that being the Tuesday next after the first Monday in said month, in pursuance of the Constitution of the United States and the laws of the State of Delaware, in that behalf, for the election of a Senator for the people of the said State in the Senate of the United States.

Whereas the official certificates or returns of the said election held in the several counties of the said State, in due manner made out, signed, and executed, have been delivered to me according to the laws of the said State by the superior court of the said counties, and having examined said returns, and enumerated and ascertained the number of votes for each and every candidate or person voted for for such Senator, I have found JOSIAH O. WOLCOTT to be the person highest in vote, and therefore duly elected Senator of and for the said State in the Senate of the United States for the constitutional term to commence on the 4th day of March, in the year of our Lord 1917.

I, Charles R. Miller, governor, do therefore, according to the form of the act of the general assembly of the said State and of the act of Congress of the United States, in such case made and provided, declare the said JOSIAH O. WOLCOTT the person highest in vote at the election aforesaid, and therefore duly and legally elected Senator of and for the said State of Delaware in the Senate of the United States for the constitutional term to commence on the 4th day of March, in the year of our Lord 1917.

Given under my hand and the great seal of the said State, in obedience to the said act of the general assembly and of the said act of Congress, at Dover, the 15th day of November, in the year of our Lord 1916, and in the year of the independence of the United States of America the one hundred and forty-first.

[SEAL.] CHARLES R. MILLER.

By the governor:

GEORGE H. HALL,
Secretary of State.

WINTON V. AMOS (S. DOC. NO. 678).

The PRESIDENT pro tempore laid before the Senate a communication from the chief clerk of the Court of Claims, transmitting, in response to a resolution of the 9th instant, certain information in the case of Charles F. Winton et al. *v.* Jack Amos, which, on motion of Mr. ASHURST, was referred to the Committee on Indian Affairs and ordered to be printed.

FINDINGS OF THE COURT OF CLAIMS (S. DOC. NO. 679).

The PRESIDENT pro tempore laid before the Senate a communication from the chief clerk of the Court of Claims, transmitting a certified copy of the findings of fact and conclusion filed by the court in the cause of C. S. Kinkade, administrator of the estate of James T. Gaines, deceased, *v.* The United States, which (with the accompanying paper) was referred to the Committee on Claims and ordered to be printed.

PETITIONS AND MEMORIALS.

Mr. ASHURST presented petitions of sundry citizens of Arizona, praying for an increase in the salaries of civil-service employees and also for the establishment of a retirement system for these employees, which were referred to the Committee on Appropriations.

Mr. OLIVER. I present quite a number of telegrams identical in language referring to various subjects. They are short telegrams. I ask that one of them may be read and the others filed.

The PRESIDING OFFICER. Without objection, that action will be taken.

The Secretary read one of the telegrams, as follows:

[Telegram.]

PITTSBURGH, PA., *January 14, 1917.*

United States Senate and House of Representatives:

Undersigned petition Federal censorship motion pictures, prohibition in the District of Columbia, national prohibition, prohibition for advertising in mails, prohibition interstate transmission race-gambling bets.

JOHN W. HUTCHISON.
W. G. FRANCIS.
FRANK C. OSBORN.
W. W. SHAW.
J. F. HENNING.
N. J. STRANEED.
W. P. IRWIN.
A. J. MCQUISTON.

Mr. OLIVER presented petitions of sundry citizens of Pennsylvania, praying for national prohibition, which were ordered to lie on the table.

He also presented a memorial of the Select and Common Councils of Philadelphia, Pa., remonstrating against the abolishment of the pneumatic mail-tube service in that city, which was referred to the Committee on Post Offices and Post Roads.

He also presented memorials of sundry citizens of Pennsylvania, remonstrating against the enactment of legislation to prohibit liquor advertisements from the mails, which were ordered to lie on the table.

Mr. WADSWORTH presented petitions of sundry citizens of Chautauqua and Hudson Falls, in the State of New York, praying for national prohibition, which were ordered to lie on the table.

He also presented a petition of sundry citizens of Hudson Falls, N. Y., praying for Federal censorship of motion pictures, which was referred to the Committee on Education and Labor.

He also presented memorials of sundry citizens of New York City and Dobbs Ferry, in the State of New York, remonstrating against national prohibition, which were ordered to lie on the table.

Mr. WEEKS presented petitions of sundry citizens of Massachusetts, praying for national prohibition, which were ordered to lie on the table.

Mr. FLETCHER presented memorials of sundry citizens of Jacksonville, Fla., remonstrating against the enactment of legislation to prohibit liquor advertisements from the mails, which were ordered to lie on the table.

Mr. LANE presented a petition of the Oregon National Guard Association, praying for universal military training, which was referred to the Committee on Military Affairs.

Mr. SMITH of Maryland presented petitions of sundry citizens of Maryland, praying for national prohibition, which were ordered to lie on the table.

Mr. LODGE presented a petition of the Boston Wool Trade Association of Massachusetts, praying for a continuation of

established water routes and rates under railroad control subject to the authority and direction of the Interstate Commerce Commission, which was referred to the Committee on Interstate Commerce.

Mr. STONE presented a petition of the Springfield Trades and Labor Assembly, of Missouri, praying for the repeal of the draft clause of the so-called Hay-Chamberlain Act, which was referred to the Committee on Military Affairs.

Mr. MARTINE of New Jersey presented a memorial of the American Decalcomanie Works, of Weehawken, N. J., remonstrating against the enactment of legislation to prohibit liquor advertisements from the mail, which was ordered to lie on the table.

He also presented petitions of sundry citizens of New Jersey, praying for Federal censorship of motion pictures, which were referred to the Committee on Education and Labor.

He also presented a petition of sundry citizens of Hackensack, N. J., praying for the enactment of legislation to provide for the use of surplus funds from naturalization sources for the education of immigrants, which was ordered to lie on the table.

Mr. WORKS. Mr. President, I ask to have printed in the RECORD a telegram from the Chamber of Commerce of San Francisco, Cal., urging the passage of what is known as the oil-leasing bill.

There being no objection, the telegram was ordered to lie on the table and to be printed in the RECORD, as follows:

[Telegram.]

SAN FRANCISCO, CAL.

Hon. JOHN D. WORKS,
United States Senate, Washington, D. C.:

Following resolution adopted by the board of directors of the San Francisco Chamber of Commerce:

Whereas the Committee on Public Lands of the United States Senate has, after an exhaustive investigation, reported that fairness and justice to those who have developed our oil requires adoption of remedial legislation recommended by it, and that such legislation will fully safeguard interests of the Government and conserve fuel supply of the Navy: Therefore be it

Resolved, That the Chamber of Commerce of San Francisco does hereby respectfully urge Senators and Representatives in Congress from California to use utmost endeavors toward immediate passage of general leasing bill, which contains provision for relief of oil industry.

SAN FRANCISCO CHAMBER OF COMMERCE,
ROBERT NEWTON LYNCH,
Vice President and Manager.

Mr. SHEPPARD. I have here a brief statement by Rev. Daniel A. Poling, president of the National Temperance Council, giving resolutions passed by that council at its last annual meeting, which I ask may be printed in the RECORD.

There being no objection, the statement and resolutions were ordered to lie on the table and to be printed in the RECORD, as follows:

NATIONAL TEMPERANCE COUNCIL,
Boston, Mass., January 6, 1917.

I am sending you below the official resolutions of the National Temperance Council, adopted at its annual session on December 8, 1916. We would respectfully call attention to the fact that this organization, which is composed of 225 executive leaders of about 20 national temperance organizations, of several State temperance organizations, and many of the general reform societies, unanimously supports the measures now pending for national constitutional prohibition of the liquor traffic, prohibition in the District of Columbia, the Territories, etc., the closing of the United States mails against liquor advertising.

In behalf of these organizations, I earnestly urge your support and vote for these measures.

Very sincerely, yours, DANIEL A. POLING, *President.*

Resolutions passed by the National Temperance Council December 8, 1916.

In the interest of unity and cooperation among the organizations whose members belong to this council we recommend to all churches, temperance, prohibition, and reform movements of the United States active support of the following measures:

1. National constitutional prohibition.
2. Prohibition in the District of Columbia and the Territories and wherever else the Federal Government has jurisdiction, including prohibition of liquor shipments for mission fields.
3. Closing the United States mails against liquor advertising.
4. An aggressive campaign to secure the enforcement of the prohibitory laws through the officers of the law.
5. The renewal of a widespread educational campaign in the interest of total abstinence and prohibition, especially in cities.
6. Generous publicity in as many languages as possible, particularly in newspapers, with care that only exact facts be published, and demand that advertising organizations and the press refuse space to proliquor falsehoods.

WATER-POWER DEVELOPMENT.

Mr. WALSH. Mr. President, I give notice, so that those who are interested may know, that upon the conclusion of the remarks of the Senator from Colorado [Mr. THOMAS] I shall address the Senate upon the pending bill, not to exceed half an hour, for the purpose of laying before the Senate the character of the measure.

In this connection, Mr. President, I clipped from a paper a day or two ago a rather interesting dispatch telling about the efforts of the Kingdom of Italy to utilize the water powers of that great country. I ask that it be read at the desk.

The PRESIDENT pro tempore. Without objection, the Secretary will read as requested.

The Secretary read as follows:

[From the Christian Science Monitor.]

ITALY'S WATER POWER.

ROME, ITALY.

A review accompanied by statistical tables of the water power available in Italy for the generation of electrical force has been issued by the ministry of agriculture. The importance of the full utilization of this "white coal," as it has come to be called, has been brought home to the nation at large by the enormously increased cost of fuel, owing to the difficulties of maritime transports. For the last 30 years data as to the hydraulic force available in Italy have been collected methodically, but not all the watercourses have yet been studied from source to mouth, although the work has reached its thirty-eighth volume. Special attention has been paid in this study to the condition of the various rivers and torrents in time of droughts. Some of the largest rivers of Italy, such as the Po, Ticino, Mincio, Adige, Arno, Tiber, Garigliano, and Volturno, are of considerably less importance than the actual body of water would promise, owing to the very level course of the lower stretches and the height of the banks above low-water mark. The average driving power has been estimated at 123,200 horsepower for the watercourses along the Ligurian coast; 926,900 horsepower for the rivers flowing into the Tyrrhenian Sea; 195,500 horsepower for the rivers flowing into the Ionian Sea; 45,000 horsepower for the Sicilian watercourses; 553,100 horsepower for those flowing into the Adriatic; and 320,000 horsepower for the southern tributaries of the Po, making a total of 2,163,700 horsepower. The tributaries flowing into the left bank of the Po have not yet been accurately studied, but the driving force obtainable from them is roughly estimated at 774,000 horsepower and 2,052,000 horsepower is attributed to the remainder of the unstudied watercourses, bring the grand total up to approximately 5,000,000 horsepower.

Mr. SHAFROTH. Mr. President, I wish to say a word with respect to the article which has just been read. It evidently indicates that the countries of Europe are very much interested in the development of water power, and so are we. We do not think it is relevant to the bill which is under consideration, because we regard the bill under consideration as one which crushes out every right of a State to control that which has been recognized as the right of the State, and instead of developing it will absolutely retard, in our judgment, the development of water power.

REPORTS OF COMMITTEES.

Mr. CLAPP, from the Committee on Indian Affairs, to which was referred the bill (S. 7833) authorizing the Chippewa Indians in the State of Minnesota to submit claims to the Court of Claims, reported it without amendment and submitted a report (No. 925) thereon.

Mr. WADSWORTH. I am directed by the Committee on Claims, to which was referred the bill (S. 3962) for the relief of the legal representatives of the estate of Henry H. Sibley, deceased, to submit an adverse report (No. 926) thereon, and I ask that the bill be postponed indefinitely.

Mr. GALLINGER. Let the report go to the calendar.

The PRESIDENT pro tempore. The report will be placed on the calendar.

Mr. WADSWORTH, from the Committee on Claims, to which was referred the bill (S. 5768) for the relief of Frank Carpenter, reported it without amendment and submitted a report (No. 927) thereon.

Mr. GRONNA, from the Committee on Claims, to which were referred the following bills, reported them severally with an amendment and submitted reports thereon:

S. 3507. A bill for the relief of Elizabeth Marsh Watkins (Rept. No. 929);

S. 3895. A bill for the relief of the Portland Iron Works (Rept. No. 928); and

S. 6595. A bill to reimburse William Blair for losses and damages sustained by him by the negligent dipping of his cattle by the Bureau of Animal Industry, Department of Agriculture (Rept. No. 930).

Mr. FERNALD, from the Committee on Claims, to which was referred the bill (S. 2749) for the relief of George L. Thomas, reported it without amendment and submitted a report (No. 931) thereon.

He also, from the same committee, to which was referred the bill (S. 141) for the relief of William E. Johnson, reported it with amendment and submitted a report (No. 932) thereon.

Mr. WALSH, from the Committee on the Judiciary, to which was referred the bill (S. 7447) to amend section 269 of chapter 231 of the act of March 3, 1911, entitled "An act to codify, revise, and amend the laws relating to the judiciary," reported it without amendment.

CHANGE OF REFERENCE.

Mr. JONES. Mr. President, on January 13, I submitted an amendment which I intend to propose to the bill providing appropriations for the District of Columbia. The amendment was referred to the Committee on the District of Columbia. It should have gone to the Committee on Appropriations. I ask that the Committee on the District of Columbia be discharged

from the further consideration of the amendment, and that it be referred to the Committee on Appropriations.

The PRESIDENT pro tempore. Without objection, that disposition will be made of the amendment.

KANAWHA PACKET CO. V. UNITED STATES.

Mr. CHILTON. Mr. President, with a great deal of regret I report to the Senate Senate bill 6632, which is a bill for the relief of a citizen of West Virginia, with a recommendation of the Committee on the Judiciary that the bill be referred to the Committee on Claims.

I desire to state that I felt that the Judiciary Committee was the proper committee to deal with the subject, but my associates on the committee disagreed with me, and I report back, at their direction, and ask unanimous consent that the Committee on the Judiciary be discharged from the further consideration of the bill, and that it and the accompanying papers be referred to the Committee on Claims.

The PRESIDENT pro tempore. Without objection, that disposition will be made of the bill.

APPOINTMENTS OF PRISON OFFICIALS.

Mr. SMITH of Georgia. Mr. President, I report favorably from the Committee on the Judiciary Senate bill 7561, to amend an act entitled "An act for the erection of United States prisons and for the imprisonment of United States prisoners, and for other purposes," to fix the terms of office of the superintendent of prisons, the wardens, and the deputy wardens, to provide for their appointment, and for other purposes. This is a bill providing that the office of superintendent of prisons and the office of warden of the three national penitentiaries be made presidential appointments, subject to confirmation by the Senate. I wish to state, in connection with the report, that there are three national prisons, one at Atlanta, Ga.; one at Leavenworth, Kans.; and one at McNeill Island, Wash. There is one superintendent of prisons. It is these four officers that will be changed by this bill from being officers who are merely designated by the Attorney General and subject to removal at pleasure by the Attorney General, without senatorial consideration of the appointments, into appointments that are to be made by the President, subject to the advice and consent of the Senate, and to be confirmed by the Senate.

I wish to say, Mr. President, that I have submitted this bill to the Senators from Kansas, and they each very cordially agree with me in the desirability of its passage. I have also submitted it to the Senators from Washington, and I understand that they each agree to the passage of the bill. The salaries of these officials are in no way changed. The only change that is made is that in recognition of the importance of the position of superintendent of prisons and the importance of the position of wardens of penitentiaries, they are made presidential appointments. I believe this proposed action is in accord with the practice in those States which have given special attention to their prison improvement, and my own observation of the working of the prison at Atlanta, Ga., satisfies me that a firmer tenure of office should be given to the wardens.

I desire to ask unanimous consent for the present consideration of the bill. I think there is no opposition at all to it.

The PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. JONES. Mr. President, I simply want to say that while I do not object to the immediate consideration of the bill personally, I should prefer to have these places put under the classified service. That, however, seems hardly possible now. I think this proposed legislation will improve the present condition of things, and for that reason solely I do not object to the immediate consideration of the bill.

Mr. GRONNA. Mr. President, may we have the bill read?

The PRESIDING OFFICER. The Secretary will read the bill.

The Secretary read the bill, which had been reported from the Committee on the Judiciary with amendments. The first amendment was, in section 1, page 1, line 5, after the name "March," to strike out "thirtieth" and insert "third," so as to read "approved March third, eighteen hundred and ninety-one."

The amendment was agreed to.

The next amendment was, in section 2, page 2, line 1, after the word "warden," to strike out "and deputy warden," so as to read:

That the warden for each of such prisons shall be appointed in like manner and for a like term, at annual salaries as follows, payable monthly.

The amendment was agreed to.

The next amendment was, in section 2, page 2, line 5, after "$4,000," to strike out "deputy warden, $2,000," and insert "and," and in line 6, after "$2,000," to strike out "deputy warden, $1,200," so as to read:

At Atlanta, Ga., and at Leavenworth, Kans., warden, $4,000, and at McNeil Island, Wash., warden, $2,000.

The amendment was agreed to.

The next amendment was, in section 3, page 2, line 10, after the name "March," to strike out "thirtieth" and insert "third," so as to read "approved March third, eighteen hundred and ninety-one."

The amendment was agreed to.

Mr. TOWNSEND. I ask that the bill as finally amended may be read, in order that we may see what it proposes to accomplish.

The PRESIDENT pro tempore. The Secretary will read the bill as finally amended.

The Secretary proceeded to read the bill.

Mr. THOMPSON. I should like to ask the Senator from Georgia if there is any change in the proposed law, except that relative to the method of making these appointments?

Mr. SMITH of Georgia. There is no change at all in the present status of the offices, except to provide that their incumbents shall be appointed by the President and shall be subject to confirmation by the Senate.

Mr. THOMPSON. There is no change in the salaries?

Mr. SMITH of Georgia. None whatever.

Mr. TOWNSEND. Mr. President, the question of an office being vacated before a successor to the retiring official has been appointed, it seems to me, has been brought to our attention, and I think that the bill ought to provide that the officers referred to shall hold for a period of four years or until their successors are confirmed. We would not have had the trouble we have had in connection with appointments to the Interstate Commerce Commission if that were the law in connection with that commission.

Mr. SMITH of Georgia. Mr. President, I accept the amendment suggested by the Senator from Michigan, which will provide for a term of four years and until their successors are appointed.

Mr. GALLINGER. "Appointed and qualified."

Mr. SMITH of Georgia. "Appointed and qualified."

The PRESIDENT pro tempore. The Secretary will state the amendment.

The SECRETARY. On page 1, lines 9 and 10, it is proposed to strike out the words "and shall hold office for the term of four years" and to insert "for a period of four years or until their successors are appointed and qualified."

The PRESIDENT pro tempore. Without objection, the amendment is agreed to. The Secretary will resume the reading of the bill as amended.

The Secretary resumed and concluded the reading of the bill as amended, as follows:

Be it enacted, etc., That an act entitled "An act for the erection of United States prisons and for the imprisonment of United States prisoners, and for other purposes," approved March 3, 1891, be, and the same is hereby, amended so that hereafter the superintendent of prisons shall be appointed by the President, by and with the advice and consent of the Senate, for a period of four years or until their successors are appointed and qualified, at an annual salary of $4,000, payable monthly, his powers and duties to be fixed as now provided for by law.

SEC. 2. That the warden for each of such prisons shall be appointed in like manner and for a like term, at annual salaries as follows, payable monthly:

At Atlanta, Ga., and at Leavenworth, Kans., warden, $4,000; and at McNeil Island, Wash., warden, $2,000.

SEC. 3. That so much of section 4 of the act entitled "An act for the erection of United States prisons and for the imprisonment of United States prisoners, and for other purposes," approved March 3, 1891, as conflicts with the provisions of this act is hereby repealed.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to amend an act entitled 'An act for the erection of United States prisons and for the imprisonment of United States prisoners, and for other purposes,' to fix the terms of office of the superintendent of prisons and the wardens, to provide for their appointment, and for other purposes."

LEGISLATIVE, ETC., APPROPRIATIONS.

Mr. OVERMAN. From the Committee on Appropriations I report back favorably with amendments the bill (H. R. 18542) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1918, and for other purposes, and I submit a report (No. 933) thereon. I desire to give notice that I shall ask

the Senate to consider the bill to-morrow morning after the routine morning business.

The PRESIDENT pro tempore. The bill will be placed on the calendar.

BILLS AND JOINT RESOLUTION INTRODUCED.

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. CUMMINS:

A bill (S. 7861) granting a pension to Mattie B. Frede (with accompanying papers); to the Committee on Pensions.

By Mr. FERNALD:

A bill (S. 7862) granting an increase of pension to Addie M. Higgins (with accompanying papers); and

A bill (S. 7863) granting an increase of pension to Morey Milliken (with accompanying papers); to the Committee on Pensions.

By Mr. SHAFROTH:

A bill (S. 7864) granting an increase of pension to Harrison S. Vaughn; and

A bill (S. 7865) granting an increase of pension to Cyrillus B. Ayres; to the Committee on Pensions.

By Mr. LANE:

A bill (S. 7866) for the relief of the Crow Indians in Montana; to the Committee on Indian Affairs.

By Mr. JONES:

A bill (S. 7867) granting an increase of pension to Martin H. Conger (with accompanying papers); and

A bill (S. 7868) granting an increase of pension to George W. Welch (with accompany papers); to the Committee on Pensions.

By Mr. CHILTON:

A bill (S. 7869) granting a pension to Catherine Rogers (with accompanying papers); and

A bill (S. 7870) granting a pension to John P. Fetty (with accompanying papers); to the Committee on Pensions.

By Mr. SMITH of Arizona:

A bill (S. 7871) to authorize the sale of the plant of the Garden City project, Kansas, and for other purposes; to the Committee on Irrigation and Reclamation of Arid Lands.

By Mr. WILLIAMS:

A bill (S. 7872) to confirm and ratify the sale of the Federal-building site at Honolulu, Territory of Hawaii, and for other purposes; to the Committee on Public Buildings and Grounds.

By Mr. CURTIS:

A bill (S. 7873) granting a pension to Nancy E. Baskins;

A bill (S. 7874) granting an increase of pension to H. C. Rowley (with accompanying papers);

A bill (S. 7875) granting an increase of pension to Henry W. Ela (with accompanying papers);

A bill (S. 7876) granting a pension to Mary F. Brown (with accompanying papers);

A bill (S. 7877) granting an increase of pension to Charles O. Thorp (with accompanying papers);

A bill (S. 7878) granting a pension to John N. Baker (with accompanying papers);

A bill (S. 7879) granting an increase of pension to Alexander F. Neely (with accompanying papers);

A bill (S. 7880) granting an increase of pension to Ephriam Otto (with accompanying papers); and

A bill (S. 7881) granting an increase of pension to Ada J. Bevelle (with accompanying papers); to the Committee on Pensions.

By Mr. THOMPSON:

A bill (S. 7882) granting an increase of pension to Charles Auge (with accompanying papers); to the Committee on Pensions.

By Mr. JOHNSON of Maine:

A bill (S. 7883) granting an increase of pension to George Blake (with accompanying papers);

A bill (S. 7884) granting an increase of pension to Ezra F. McIntire (with accompanying papers);

A bill (S. 7885) granting an increase of pension to George W. Ricker (with accompanying papers);

A bill (S. 7886) granting a pension to Walter M. Edes (with accompanying papers); and

A bill (S. 7887) granting an increase of pension to J. Marcellus E. Hart (with accompanying papers); to the Committee on Pensions.

By Mr. SMOOT:

A bill (S. 7888) to extend the right of entry under section 6 of the enlarged homestead acts; to the Committee on Public Lands.

By Mr. STERLING:

A joint resolution (S. J. Res. 198) providing for the confirmation of the agreements between the States of South Dakota, Montana, and Idaho and the United States relating to the selection of lieu or indemnity lands; to the Committee on Public Lands.

AMENDMENTS TO LEGISLATIVE, ETC., APPROPRIATION BILL.

Mr. LEWIS submitted an amendment proposing to increase the number of statistical experts, at $2,000 each, in the Bureau of Labor Statistics from 4 to 8, intended to be proposed by him to the legislative, etc., appropriation bill (H. R. 18542), which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment proposing to increase the number of clerks of class 4 in the Bureau of Labor Statistics from 7 to 9, intended to be proposed by him to the legislative, etc., appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment proposing to increase the number of employees at $2,520 in the Bureau of Labor Statistics from 1 to 2, intended to be proposed by him to the legislative, etc., appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment proposing to increase the number of clerks of class 2 in the Bureau of Labor Statistics from 8 to 11, intended to be proposed by him to the legislative, etc., appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment proposing to increase the number of clerks of class 1 in the Bureau of Labor Statistics from 14 to 24, intended to be proposed by him to the legislative, etc., appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment proposing to increase the number of clerks of class 3 in the Bureau of Labor Statistics from 6 to 9, intended to be proposed by him to the legislative, etc., appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

He also submitted an amendment proposing to increase the appropriation for the maintenance of the Bureau of Labor Statistics from $148,280 to $183,400, intended to be proposed by him to the legislative, etc., appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. SMOOT submitted an amendment providing during the fiscal year 1918 for an increase of compensation at the rate of 15 per cent per annum to employees who receive salaries at the rate per annum of $480 or less, etc., intended to be proposed by him to the legislative, etc., appropriation bill, which was ordered to lie on the table and be printed.

CORRUPT PRACTICES.

Mr. JONES. I submit an amendment which I intend to propose to the corrupt-practices bill (H. R. 15842), and ask that it be read.

The amendment was read and ordered to lie on the table, as follows:

After section 19, on page 37, of said act, as reported by the Senate committee, insert the following as a new section, to be known as section 19½:

"SEC. 19½. No person, association, or partnership engaged or interested in, or employed in connection with, the manufacture, distribution, or sale of intoxicating liquors, shall contribute anything of value or pay any sum of money whatsoever to any person or political committee to be used for political purposes or in any way to assist or promote the nomination or election of any candidate for nomination or election to any office covered by this act, and no candidate for nomination or election shall knowingly receive, directly or indirectly, any sum of money or contribution of any kind from such person, association, or partnership to aid or assist in his nomination or election."

RED CROSS BUILDING.

Mr. CUMMINS. I submit a resolution and ask unanimous consent for its immediate consideration.

The PRESIDENT pro tempore. The Secretary will read the resolution.

The Secretary read the resolution (S. Res. 318), as follows:

Resolved, That it is the sense of the Senate that in constructing the "Memorial building erected to the memory of the women of the Civil War," commonly known as the Red Cross Building, in the city of Washington, there be prepared and set apart, if practicable, a suitable hall in one wing of the building for the free use of the "women of the Civil War" as represented by all the Grand Army organizations, and that a similar suitable hall in another wing of the building be prepared and set apart, if practicable, for the free use of the "women of the Civil War" as represented by all the organizations of the United Daughters of the Confederacy and kindred organizations.

The PRESIDENT pro tempore. The Senator from Iowa asks unanimous consent for the immediate consideration of the resolution. Is there objection?

Mr. SMITH of Georgia. Mr. President, what Senator offered the resolution?

The PRESIDENT pro tempore. The senior Senator from Iowa [Mr. CUMMINS].

Mr. TOWNSEND. Mr. President, I should like to ask the Senator from Iowa a question.

The PRESIDENT pro tempore. Does the Senator from Georgia yield to the Senator from Michigan?

Mr. SMITH of Georgia. Yes.

Mr. TOWNSEND. I should like to ask the author of the resolution why it is necessary to have two rooms set aside? Why could not one room be occupied by the women of these two organizations without having a distinct notice given to the world that there is a separation between the two and that two separate rooms are required?

Mr. CUMMINS. Mr. President, I do not know. In offering the resolution I am carrying out the request and the wishes of a great number of women who were directly connected with the war, and in whose memory, largely, this building is being erected. Whether or not one hall would be suitable for both, I do not know. I think, however, that the provision of separate halls does not indicate any antagonism between the societies. I am sure there is the utmost harmony and good feeling. I suppose that they believed this to be the dignified and appropriate way in which to accomplish their desire. I have not investigated the matter sufficiently to know whether a single hall would be sufficient or not.

Mr. SMITH of Georgia. Mr. President, I hesitated for a moment about objecting, with the same thought in my mind that the Senator from Michigan had; but I think it is probable that each of the organizations would like to have Washington City headquarters, and the hall would furnish them headquarters here; I do not suppose it indicates the slightest antagonism between them.

Mr. CUMMINS. None whatever.

Mr. SMITH of Georgia. I should like to see them meet together whenever practicable. I know their relations are most cordial.

Mr. CUMMINS. I understand there are a good many women who either were connected with the war or are the descendants of women who rendered service during the war who desire to place in this building memorial windows and other tributes of loving affection toward the past, and in order to carry out that design some of them asked me to offer this resolution.

Mr. ROBINSON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Arkansas?

Mr. CUMMINS. I yield.

Mr. ROBINSON. In addition to the suggestion made by the Senator from Iowa and that made by the Senator from Georgia, it is stated that these organizations frequently have meetings here, and will desire to do so in the future; and it is entirely probable that some of their conventions might be held at the same time, in which event it would be necessary to have two halls.

Mr. CUMMINS. That would be quite possible.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

The resolution was considered by unanimous consent and agreed to.

EMPLOYMENT OF STENOGRAPHER.

Mr. SWANSON. I desire to submit a resolution, the usual resolution authorizing a committee of the Senate to hold hearings. The Committee on Public Buildings and Grounds has had a hearing, and I find that the committee has not any authority to hold hearings at this session. I ask for the present consideration of the resolution.

The PRESIDENT pro tempore. The Secretary will read the resolution:

The resolution (S. Res. 319) was read, as follows:

Resolved, That the Committee on Public Buildings and Grounds, or any subcommittee thereof, be, and hereby is, authorized during the Sixty-fourth Congress to employ a stenographer, at a cost not exceeding $1 per printed page, to report such hearings as may be had in connection with any subject which may be pending before said committee, the expenses thereof to be paid out of the contingent fund of the Senate; and that the committee, or any subcommittee thereof, may sit during the sessions or recess of the Senate.

Mr. SMOOT. Mr. President, the resolution will have to go to the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. SWANSON. I ask that it be so referred.

The PRESIDENT pro tempore. The resolution will be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

CORRUPT PRACTICES.

Mr. OWEN. Mr. President, before the Christmas holidays the corrupt-practices bill (H. R. 15842) was recommitted to the Committee on Privileges and Elections, with a unanimous-consent agreement that it should be reported back not later than the 4th of January, with an understanding that when it was reported back some arrangement might be made whereby it could be disposed of at some convenient time during this session. I ask unanimous consent that to-day three weeks the bill may be taken up for consideration and disposed of.

Mr. TOWNSEND. Mr. President, I object.

The PRESIDENT pro tempore. Objection is made.

Mr. OWEN. Then, I ask, Mr. President, that the bill may be taken up and disposed of to-day four weeks.

Mr. TOWNSEND. Mr. President, I shall not agree now to any date for a vote on any bill. I am not opposed to this particular bill, but I shall not consent to the fixing of a date to vote on any measure until another matter in which I am interested has been disposed of. I do not mean to say that I am in favor of the proposed bill as it stands, because I do not know just what it is. I am in favor of the general principles of it. I have not read it and do not know about its details; I am not objecting to it on account of the nature of the bill.

The PRESIDENT pro tempore. The Senator from Michigan objects.

EMBARGO ON FOOD PRODUCTS.

Mr. McCUMBER. Mr. President, I wish to give notice that on Thursday, January 18, 1917, immediately after the close of the routine morning business, I shall ask the courtesy of the Senate to discuss the resolution which I submitted on Saturday last, relating to the proposed embargo upon the exportation of food products.

CONTROL OF FEDERAL JUDGES.

Mr. OWEN. Mr. President, I wish to withdraw the notice I gave last week that I would address the Senate at 2 o'clock to-day on the joint resolution introduced by me forbidding Federal judges to declare any act of Congress unconstitutional, and providing penalties therefor.

WATER-POWER DEVELOPMENT.

Mr. WALSH. Mr. President, I move that the Senate proceed to the consideration of House bill 408.

Mr. OLIVER. Mr. President, it is not my intention to oppose the consideration of the water-power bill; but I should like to ask some one of the Senators on the other side of the Chamber, who are responsible for the conduct of the business of the Senate, if there is any intention, at any time during this session, of considering bills on the calendar? There are a large number of Senate bills on the calendar—not very important measures, but in which Senators have some interest—and if they are to be acted on at all by Congress during this session the Senate ought to consider them at some very early date. It seems to me that instead of using up the morning hour in considering bills which are the unfinished business, we ought to occupy that time in considering Senate bills on the calendar.

I should like to hear from somebody on the other side of the Chamber on that subject.

Mr. WALSH. Mr. President, although I am not authorized to speak for anybody on this side of the Chamber, I think the suggestion made by the Senator from Pennsylvania is one that ought to have very general support, if not unanimous support. I think at some early day we ought to take up the calendar for the disposition of uncontested bills; and I suggest that we do so, say, on Wednesday morning.

Mr. OLIVER. If that is understood——

Mr. WALSH. I will see if some arrangement of that kind can not be made.

Mr. OLIVER. I hope the Senator will do so.

Mr. WALSH. I renew my motion that the Senate proceed to the consideration of House bill 408.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 408) to provide for the development of water power and the use of public lands in relation thereto, and for other purposes.

Mr. THOMAS. Mr. President, I appreciate the value of time to the present session of Congress. I know something of the immense volume of business which confronts it, the transaction of which is very necessary to the public interests. I realize that the session is rapidly drawing to a close, and that every moment left to us should be utilized in the consideration of important measures which must either be enacted into law between now and the 4th of March or take their chances in the regular course of the Sixty-fifth Congress. I want to assure

the Senate, therefore, that I would not trespass upon its patience or utilize any of the time remaining to us in the discussion of this bill if I were not fully convinced that it is one of the most important legislative measures ever presented for our consideration, and that its enactment would seriously and permanently impair the well-being of the State which I partly represent upon this floor.

It is true that this view of the measure may be distorted and that my opinions regarding the modern doctrine of conservation may be tinctured by local prejudice, due to the feeling that the people of the West and particularly of the arid or semiarid States are not being dealt with justly and fairly by the General Government with regard to the public domain within their borders. Nevertheless I believe, and therefore it is my duty to give to the Senate the reasons why I regard, this bill as inimical to the public interest, and that its passage should be prevented, if possible.

It has been said during the discussion, either of the bill or of the motion to take it up, that this was an administration measure. If by that is meant that the bill is one to which the Secretary of the Interior is friendly, or one which the President would like to see passed, I have no criticism to make. If by the statement it is meant that this is one of the measures which the administration as such has indorsed and presented to the consideration of the Senate, whereby the Senators who are in accord with the administration are expected to support it, then I must dissent from the statement. In his recent message the President made no reference to this as one of the measures which should receive our consideration.

Mr. MYERS. Mr. President, may I interject a statement at this point?

The PRESIDING OFFICER (Mr. LEWIS in the chair). Does the Senator from Colorado yield to the Senator from Montana?

Mr. THOMAS. Yes.

Mr. MYERS. Last summer—I think it was in July, during the last session, if I recollect aright—the President wrote a letter to the Senator from Indiana [Mr. KERN], chairman of the Democratic steering committee and the Democratic floor leader, which the Senator from Indiana kindly showed to me and which I think I had the privilege of reading, in which the President urged the Senator from Indiana to have the Democratic steering committee set down for action by the Senate the identical bill which is now before the Senate, and to keep it before the Senate until disposed of; and urged that the bill now under consideration be taken up and disposed of at that session. That is according to my recollection.

Mr. THOMAS. Is it fair to ask the Senator if the letter was written by the President at the Senator's request or suggestion?

Mr. MYERS. It was not at my request; no, sir.

Mr. THOMAS. Mr. President, I have some recollection of that letter. It is not as distinct as I wish it were; but I do not think that in that letter or at any other time the President has done more than to suggest the consideration of the bill.

Mr. JONES. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Washington?

Mr. THOMAS. I yield.

Mr. JONES. I wondered whether it was possible for us to have a copy of that letter.

Mr. THOMAS. I have no doubt that if the request is made of the Senator to whom the letter was written a copy of it can be secured, although that is merely my impression, and not in any way representing his attitude.

Mr. GALLINGER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from New Hampshire?

Mr. THOMAS. I do.

Mr. GALLINGER. Even if such a letter was written as has been stated, and the Senator from Colorado did not agree with the views expressed in it, I apprehend it would not influence the Senator, would it?

Mr. THOMAS. The Senator has anticipated the very statement I was about to make. Had such a request been made, even if the bill were here undoubtedly and unquestionably as an administration measure in the fullest sense of the word, I could not without self-stultification either support it or permit it to be passed without protesting against it or without giving to the Senate the reasons upon which my protest is based.

Mr. MYERS. Mr. President, just a word of explanation, if the Senator will permit me.

The PRESIDING OFFICER. Does the Senator from Colorado further yield to the Senator from Montana?

Mr. THOMAS. I do.

Mr. MYERS. I do not pretend to say that the President has urged the passage of this bill exactly as it is, nor that he is in favor of all of the provisions of the bill; but in messages to Congress he has several times urged that some bill embodying this principle and along this line be enacted into law.

Mr. THOMAS. I would not have referred to the subject at all, Mr. President, but for the fact that the statement was made at some time during the progress of our consideration of the measure, and I felt that I owed it to the Senate, and particularly to my Democratic colleagues, to define what I understand to be the facts.

Mr. President, it is true, I have no doubt—although I have not discussed the subject with him for a good while—that the President is, generally speaking, in favor of what may be called the modern principle of conservation. That his Secretary of the Interior entertains that view with regard to land administration there can be no doubt. Consequently I assume that the two are in accord upon the general subject. That this bill as it passed the House was drawn according to the lines of view of the Secretary of the Interior is equally evident. Indeed, I perhaps may assume that it was very largely the work of the Interior Department. But, Mr. President, those of us who live in the semiarid States of the Union which are the victims of modern notions of conservation, within whose boundaries are the remnants of that public domain which hitherto, under a broad and statesmanlike policy has been subject to disposition under which titles have been acquired by citizens, thereby upbuilding Commonwealths and developing their property, know what has been the effect and operation of the principle—if I may so dignify it—upon our growth and our condition during the past five or six years as contrasted with what they were before and as contrasted with the more fortunate career of States admitted earlier into the Union, and whose domain was disposed of under laws governing the subject from the inception of our Union almost down to the first decade of the present century.

Mr. President, I think this bill is objectionable in many of its details as well as in its general subject and purpose. Many of the provisions designed for the operation of the act are not only, in my opinion, impossible of practical development and operation, but they are manifestly in collision with the State laws and regulations which it recognizes. But beyond and above these details, which might be rectified, lie two fundamental objections, each of which is to my mind wholly irreconcilable with the rights of the States, upon the one hand, and the defined powers of the Government upon the other. Hence the bill aims at the political integrity of the Commonwealths where it will become operative and must very seriously affect, if indeed it does not practically supplant, in some communities the good old Anglo-Saxon principle of local self-government.

I press this view, first, because the bill is the entering wedge of a policy which proposes to convert the Government of the United States into a huge continental landlord with its own citizens as its tenantry, and as far as such a thing is possible in the same country to establish an absentee landlordism, since the headquarters of the landholder are in Washington, and its domains lie, generally speaking, west of the one hundredth meridian of longitude, from 1,750 to 3,000 miles away from the seat of government.

Mr. WALSH. Mr. President——

Mr. THOMAS. In just a moment. Also because the bill comes in direct conflict with, and therefore if held valid must derogate from, one of the fundamental principles of State sovereignty, to wit, the power of eminent domain and control over all the property within the boundaries of these Commonwealths, subject only to such limitations as are made thereto by the express provisions of the Federal Constitution.

I yield to the Senator from Montana.

Mr. WALSH. I observe that the Senator is addressing his comment very properly to this particular bill. Evidently the Senator is not satisfied with the lines on which the bill is drawn. I wish to ask the Senator if he agrees with those of us who want legislation, that legislation on the subject of the development of this water power is needed?

Mr. THOMAS. Mr. President, it depends upon whether my views and those of the Senator could possibly coincide, and I do not think they could.

Mr. WALSH. No; suppose your views prevail; do you feel that there is a real necessity for water-power legislation?

Mr. THOMAS. Not at all. I shall endeavor to demonstrate before I finish that there is in the States which we represent, as in the others, a plenary power inherent in all sovereignties known as the power of eminent domain, applicable to every proprietor, whether public or private, through the exercise of which the water power belonging to the States of the West and to their

citizens can be fully developed by the acquisition of these sites, which the Government ought to give to the States instead of withholding them perpetually from the possibility of private ownership unless and until their own ideas with regard to operation can be crystallized into law.

But first, Mr. President, with regard to some features of the bill itself, I do not think that my very able colleagues and friends from Montana who advocate this bill will question the proposition that the waters of the national streams in the semi-arid States belong to the people of the States, respectively, subject to appropriation by their citizens for beneficial uses.

Mr. MYERS. Mr. President, I wish to say at this time the bill itself recognizes that and so states.

Mr. THOMAS. So the Senator says in his report, but I think I can demonstrate that the recognition given by this bill to this right is the recognition which a highway robber gives to his victim when he recognizes his ownership of the watch of which he deprives him.

Mr. MYERS. But this bill takes nothing away from the States. It takes no water rights whatever away. So the illustration of the highway robber is not applicable.

Mr. THOMAS. If the Senator can convince this body that that is true, then this part of my argument will be worthless. I have stated what I believe to be a fundamental proposition with regard to the ownership of these waters, a proposition that has been recognized and enforced by the courts, both State and National, ever since the subject became an active one, a principle which has been carried so far that the Supreme Court of the United States has declared that where the Government for its administrative purposes desires to acquire a water right or the extension of a water right in the arid West, it must make its appropriation just like a citizen by complying with the requirements of the laws of the particular State where the watercourse is located, and then by appropriating through actual beneficial use the amount of water which it desires.

Mr. SMOOT. Will the Senator yield for a question?

Mr. THOMAS. I yield.

Mr. SMOOT. I should like to ask a question of the Senator from Montana. I should like to ask him if he believes that the waters of the State belong to the State?

Mr. MYERS. I do. The bill says so.

Mr. SMOOT. Of course, we may disagree upon what the bill provides.

Mr. MYERS. The Senator knows the section where it is.

Mr. SMOOT. The senior Senator from Montana says he believes the waters of the State belong to the State. I should like to ask the Senator from Montana having the bill in charge whether he believes that the waters of a State belong to the State?

Mr. MYERS. As chairman of the committee I reported the bill and I am in charge of it.

Mr. SMOOT. Excuse me; I thought the junior Senator from Montana [Mr. WALSH] had the bill in charge.

Mr. THOMAS. I think in this case, like many others, silence gives consent.

Mr. WALSH. I will be very glad to correct any wrong impression that might be created.

Mr. THOMAS. I will say, then, if the Senator denies the proposition, I feel greatly surprised.

Mr. WALSH. The Senator is quite correct. I have declared upon the floor of the Senate repeatedly that I am in entire accord with the proposition advanced by the Senator that the State owns the waters of the streams. I may say here now what I have heretofore asserted that I argued that very proposition before the Supreme Court of the United States.

Mr. SMOOT. I now understand the Senator did so before the Supreme Court of the United States, but I thought he argued just the contrary at the Western States Water Power Conference.

Mr. WALSH. The Senator is in error about that. I would be glad to provide him with a copy of the speech.

Mr. SMOOT. I have a copy of the Senator's speech before me now.

Mr. THOMAS. Mr. President, I shall assume that such is the law, although I may refer to some authorities bearing upon the subject in connection with others of equal importance.

Another proposition equally evident is that the power sites, so called, that is to say tracts of land that are so located with reference to the streams as to be available for sites for the generation of hydroelectric energy, belong to the Government of the United States and that it has withdrawn all of them which are of any consequence from private entry and location and ownership.

Of course, we all know—it is not necessary to assume—first, that the union of these two things is essential to the development of hydroelectric power; and, second, that unless there can be some combination of the two satisfactory to both owners, or some combination made without regard to whether it is or is not satisfactory, the further development of western power must be arrested. This bill proposes to bridge that chasm, ostensibly through the ownership by the Government of the power sites, but actually by the confiscation of the water belonging to the people.

Mr. MYERS. The Senator, I think, is mistaken in that. The bill does not purport to do that by ownership in the Government of the power but ownership of the land.

Mr. THOMAS. That is a distinction without a difference. If my property is taken from me under the assumption that because the party taking it insists that I still own it, but I nevertheless lose possession and lordship over it and all enjoyment of it, the assurance of the dominating power is not very comforting.

Mr. SMITH of Arizona. You own the horse, but the other man has the stable and will not let you have it.

Mr. THOMAS. He will not even let me take it out.

Mr. SHAFROTH. I wish to ask the Senator from Colorado——

Mr. THOMAS. I hope my friends will not interrupt me so frequently, because I can not argue——

Mr. MYERS. Just a word in this connection and then I will desist. The bill expressly states that the regulation of this power and the prices to be charged shall be in the hands of the utility commissions of the different States where there are such commissions.

Mr. THOMAS. Oh, Mr. President, I know what the bill contains. I have read it and reread it; I have dreamed of it. I think I know something about it, and before I am through I shall, if possible, demonstrate that while the things are in the bill to which the Senator calls my attention, nevertheless they are there in such a fashion as to accomplish the very confiscation to which I have called attention. I yield to my colleague.

Mr. SHAFROTH. I should like to ask the Senator from Montana a question. I understand the Senator believes that these waters do belong to the States.

Mr. MYERS. I think so.

Mr. SHAFROTH. As the Senator knows, under the laws of the States a man having a water-power plant in contemplation has a right to condemn private property in the hands of private citizens for that water power.

Mr. MYERS. Undoubtedly.

Mr. SHAFROTH. When the Government steps in——

Mr. THOMAS. I have not yielded for an argument on this subject. I want to be as liberal as possible, but with all due respect to my colleague it seems to me an argument within an argument, so to speak, may not be convincing.

Mr. SHAFROTH. I merely wanted to get in a little conclusion, that is all.

The PRESIDING OFFICER. The Senator from Colorado declines to yield further, and he will proceed.

Mr. THOMAS. Now, let me come to the title of the bill. It is "An act to provide for the development of water power and the use of public lands in relation thereto, and for other purposes." If that title is at all indicative of the contents of the bill it tells us that it is to develop water power and that the use of the public lands in relation thereto is a mere incident. It states the situation correctly. It is a bill, presumably at least, for the development of water power. It is a bill for the mere use of such public lands in relation thereto as the development of that water power requires.

The Senator who has charge of the bill wrote the report which has been read for the edification of the Senators, who probably received their knowledge of its contents largely through the new machines that have been installed in the cloakrooms, and which offer a premium to absenteeism. Consequently, I presume I may be pardoned for referring again to some of the things to which the report refers:

The committee regards this as one of the most important measures—

That is true—

and one of the most beneficial and conducive to the public welfare which has been or will be considered at this session of Congress.

That is at least questionable.

The object of this measure is the better and speedier development for useful and beneficial purposes of the great undeveloped water power of the country, now lagging on account of inadequate and inefficient laws.

Unquestionably that is the object which the Senator from Montana had in view.

It is universally admitted that the present laws for the development of water power are lame and ineffective—

Some exceptions must be made to that—

and that new legislation must be had before the great and untold benefits to civilization, progress, and growth from the latent water power of the country may be had. This bill seeks to attain that result.

How?

The bill distinctly recognizes the ownership of and the right of control in the States of the use of the waters in the flowing streams of the States.

This recognition as far as I am able to ascertain lies or is found in two requirements or two provisions of the bill, the one being a proviso to the first section, which is—

That no lease shall be granted until the applicant has complied with the requirements of the laws of the State, States, or Territory wherein said project is to be located, providing for the appropriation of water to develop or generate the electrical energy intended to be generated by applicant's proposed project.

The other is section 13:

That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State relating to the control, appropriation, use, or distribution of water.

I am not able now to recall any other provision of the bill which even seems to be in accord with the statement of the Senator upon the floor or his statement in the report.

In cases where latent power is going to waste in the streams of the States and where the land adjacent thereto and necessary for the location of power sites belongs to the United States Government this measure recognizes that there must be cooperation between the States which control the water and the United States Government, which owns the land.

The cooperation here between the United States Government which owns the lands and the State which owns the water is the cooperation of absolute power as contrasted with almost absolute helplessness. It is a cooperation in which the State, the owner of the possible and principal thing to be developed, is not consulted at all, in which its interests are barely referred to by a requirement that its laws with regard to the acquisition of the water rights must be respected. They might be respected entirely, and yet if the owner of the land, which is an absolute essential to the business sought to be here controlled, is not permitted to impose its own terms, whether desired or not, the cooperation not only becomes ineffective, it is absolutely nonexistent. The report well says that—

Neither alone can successfully develop water power. There must be cooperation to attain best results, and that this bill seeks to obtain by recognizing the right of the State to the use of the water and the right of the Federal Government to the use of the land and recognizing that both are essential to development of power.

This bill in no wise seeks to encroach upon, impair, or destroy any of the rights of the States—

I repeat I have no doubt the Senator sincerely and earnestly believes and that his colleague believes that the majority report is a correct statement of the bill and its purpose—

It is not intended in any wise or in any degree to trench upon the right of the State to the control of the water flowing in the streams within its borders. It is framed upon the distinct theory that the State owns and controls the use of the water flowing within the streams within its boundaries, and that the Federal Government owns and has the right to control and dispose of the public land bordering on and adjacent to such streams. The present laws are notoriously inefficient and defective for the development of water power in streams running through public lands, and water-power development is practically paralyzed and arrested. There must be new legislation before there can be any appreciable advance in water-power development.

Mr. President, the present Federal laws and department rules are not only deficient and ineffective for the development of water power in streams, but if these laws were recognized and applied in their letter and in their spirit now as heretofore, if these withdrawal orders were canceled, as they should be canceled, it would not be necessary for the present Congress or its successors to spend any of its time in additional legislation. The assumption is made that the laws are injuriously inefficient because, forsooth, they have been abused. They are regarded as inefficient because now there can be no method of acquiring title by those desiring to develop water power for the sites which are essential to the purpose.

I am not here, Mr. President, to criticize either this or preceding administrations for arresting certain methods of development and of acquiring public domain through the abuse and perversion of the statutes of the United States and largely through the active or passive cooperation of Government officials. Every condition which justifies extreme conservation is the outgrowth of national law coupled with national maladministration. The two combined to produce conditions which are some excuse for insisting that the pendulum shall swing to the other side of the arc and be arrested there, that every man, woman, and child in the West desiring to secure some benefit from the public domain should be presumptively regarded as a thief and a scoundrel until the contrary is distinctly and absolutely shown. So I do not admit at all, Mr. President, the proposition—I can not—that the present Federal laws are notoriously or at all inefficient for the securing of those rights and for the development of this power.

Mr. SMOOT. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Utah?

Mr. THOMAS. I do.

Mr. SMOOT. In that connection, I might call the Senator's attention to a report of the Secretary of Agriculture on this subject.

Mr. THOMAS. I intended referring to that in connection with another part of this report.

Another ground there assigned, Mr. President, for this measure is that it will check or destroy a monopoly in water power. Well, I am in hearty sympathy with anything that we can accomplish here as legislators that will restrict or prevent monopoly in anything; and in saying that I am not peculiar; I think I express the honest sentiment of every Member of this body. But there are some things, Mr. President, which are natural monopolies, which in my mind never should be farmed out to private hands. Among them is what we call hydroelectric power. You can no more prevent the coalition in a few hands of this great agency so long as private control is permitted at all than you can prevent the operation of the law of gravitation. This condition has existed practically since hydroelectric power became as valuable as we all concede it to be.

Some time ago—I think it was last February—a letter of the Secretary of Agriculture, which I exhibit to the Senate [exhibiting], was presented by the senior Senator from Florida [Mr. FLETCHER], who asked the Senate to publish it, so that the world might know that a monopoly then existed in water power. Some of us, myself among the number, opposed the publication of this document. I asserted then, and I now repeat, that the country no more needed the publication of this letter to demonstrate the existence of this monopoly than it needed to be told that when the sun sank behind the horizon night had come. It was a palpable and self-evident fact; a fact which had been advertised, a fact which had been asserted, a fact which had been demonstrated time and time again, a fact which will continue if this bill is enacted, and which will continue whether it is enacted or not, and which will, in my judgment, be as constant as any fact can be, so long as the conditions which exist and which this bill can not correct make it possible. However, the document was published at an expense of $21,000. Some one of us then asserted—I think it was the Senator from Utah [Mr. SMOOT]—that the way to get rid of a fact and to bury it forever was to publish it in just such a document as this. I am willing to stake my reputation for veracity upon the assertion that not 5 per cent or 2½ per cent of the Members of this body have ever read it or attempted to read it, and not 1 per cent of the people ever heard of it or care anything about it.

So this bill, instead of developing a tendency in any way to affect a monopolistic condition, which we have learned at this enormous expense exists, if it passes, will simply accentuate that situation. I do not think that the stars in their courses will arrest it until its real cause is removed.

Of course, it may be asked what the conditions will be if we do not enact the bill. I am obliged to say, Mr. President, that it will be the same. In other words, this bill, whether enacted or not, will not affect the question of monopoly. It is not the way to reach it. That can best be done by State ownership and control, in my judgment, of entire subject of the elements and resources whereby electric current is generated and applied to the use of mankind. So if monopoly destruction is the purpose of the bill, I think it is defeated at its outset.

Now, let us look at some objections to the details of the measure before taking up those which are fundamental. The Senator from Arizona [Mr. SMITH] and myself filed a minority report, which was read this morning. The Senator from Utah [Mr. SMOOT], the Senator from Wyoming [Mr. CLARK], and the Senator from California [Mr. WORKS] prepared and filed a much longer and more comprehensive minority report; and let me say here, Mr. President, before passing that this long minority report is one of the ablest and best prepared and best considered legal reports that I ever have seen, either here or elsewhere. To my mind it is exhaustive and conclusive of the subject, and I am satisfied that Senators who are members of the bar can not devote an hour and a half to a better purpose than by carefully reading this most interesting discussion of the law of the subject.

I have referred, Mr. President, to the absentee-landlordism element in this bill and its effect upon local self-government. These are perhaps parts of the general subject; but incidental to them are some other matters to which I shall briefly refer.

One is the multiplication of Government employees which must result from this bill. There is a saying in my State that if you go on the street and throw a stone you will strike from one to two Government land employees, either identified with the Land Office or with the Forestry Bureau or with some of the other agencies to which Uncle Sam in these days resorts for the purpose of protecting his rights against the unfortunate people who are obliged to live near his domain. They are good citizens, but they are expensive.

We all know that the cost, for instance, of the administration of the Forestry Bureau is very largely in excess of the receipts—two or three times in excess of the receipts. These receipts are divided between the Government and the States, it is true, but the great bulk of expenditures falls upon and is absorbed by administration. We pay, therefore, in taxes to support the bureau vastly more than we receive from it.

Now, if Uncle Sam is to lease all of his power sites to those who desire to develop water power, and is to insist upon an observance of all of the provisions and conditions of the lease, which he ought to do, he will be obliged, so to speak, to be upon the ground all the time. As a consequence the number of employees which we now have eating out our substance will, in all probability, be multiplied by 2. So the instance which I suggested would result in four instead of two casualties if the stone-throwing experiment be made. [Laughter.] This must be paid for, and should be paid out of the receipts of the business of the undertaking if possible. Of course, as the price of living rises, we shall be confronted with applications such as are now pending to increase the compensation of these gentlemen in order to meet the increased expense of living. And we must grant them or be inconsistent. This means, even without increases, that the enterprises to be inaugurated by this bill will become liabilities instead of assets to the Government.

Now, if this were absolutely necessary, Mr. President, for the protection of the public interests or if by its operation we could destroy the monopolistic features of the electric element in our commercial life, I would not say a word; but if it will do nothing of the sort, certainly those of us—and fortunately I notice that there are a few more of us on this side than heretofore—who believe in retrenchment in public expenditures ought to consider this view of the bill. I do not know what the ultimate expense will be; perhaps my estimate would be a partisan one, but it certainly would be very large.

Mr. HUGHES. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from New Jersey?

Mr. THOMAS. I yield.

Mr. HUGHES. The Senator referred to a report a while ago. Is that the voluminous $30,000 report about which there was discussion some months ago?

Mr. THOMAS. I think the Senator has it a little high. Its cost was $21,000.

Mr. HUGHES. Twenty-one thousand dollars.

Mr. THOMAS. Yes. Would the Senator like to read it?

Mr. HUGHES. I am not going to read it right away; but I remember at the time the estimate was made I stated that the report would be so voluminous that nobody would ever read it. I objected to its being printed, and to that expense being incurred. However, I was denounced as a reactionary and a standpatter, and other uncomplimentary things were said of me by certain "high-brow" papers in my State. All I have to say is that I wish those gentlemen who criticized me might be compelled to read that report.

Mr. THOMAS. Mr. President, I was criticized also; but, as suggested by the Senator from Utah [Mr. SMOOT], in view of the price of paper now, there is a fair possibility of getting something back by selling it for waste paper.

Mr. SMITH of Georgia. Mr. President, I desire to suggest that in addition to this document we might also sell some of the testimony for which we paid $90,000, and which nobody now wants, taken by what was called the Walsh investigating committee. I can not find anybody who wants it.

Mr. THOMAS. Why, Mr. President, I made the statement then that before the books were dry from the press the great majority of our people would forget that there ever had been such an investigation.

Mr. SMOOT. I wish to say to the Senator from Georgia [Mr. SMITH] that our last order for the sale of old public documents consisted of 976,000 volumes, which were sold at 80 cents a hundred; and next year, when the time comes around, we shall sell these for about 80 cents a hundred.

Mr. NORRIS. Mr. President, I do not care to intrude myself into the Senator's speech at this point, unless he desires that we should digress from the main question to the discussion of other questions.

Mr. THOMAS. If the Senator wants to ask a question I will yield; but I do not care to yield otherwise.

Mr. NORRIS. I wanted it to be known, at least, that there were two sides to the incidental question which has been brought up here. I do not care, and do not think it proper, to discuss it here, but if we want to sell some old paper we had better sell the CONGRESSIONAL RECORD. We will get about as much for that as for any other document.

Mr. THOMAS. I quite agree with the Senator and I will vote with him to-morrow to abolish the RECORD. So far as that is concerned I quite agree with him. Who reads the CONGRESSIONAL RECORD outside of the Senate? But that is a digression.

Mr. NORRIS. Who reads it inside of the Senate?

Mr. THOMAS. Oh, we all read our own speeches.

Mr. HUGHES. We all read what we send out as our own speeches.

Mr. THOMAS. We all read what we say about each other?

Now, Mr. President, I want to address myself for a moment to the suggestion of the Senator from Montana, that the rights of the States are recognized and conserved in the bill. I again quote from the bill:

Provided, That no lease shall be granted until the applicant has complied with the requirements of the laws of the State, States, or Territory wherein said project is to be located, providing for the appropriation of water to develop or generate the electrical energy intended to be generated by applicant's proposed project.

The Senator from California [Mr. WORKS] in the report to which I referred has shown that in his State this must be nugatory because some provisions of the law can not be complied with until the structure which is to use the water has been completed. There, of course, is a situation which would seem upon its face to be irreconcilable. This proviso, however, should be considered in connection with section 13:

SEC. 13. That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State relating to the control, appropriation, use, or distribution of water.

Mr. President, there is a strong family likeness between the irrigation codes of all the semiarid States. The main principles are identical; they differ only as to details, due either to differences of opinion among legislators or to local conditions making them necessary. Consequently, a reference to the laws of one of them is in large degree a reference to the laws of all of them.

In my State the waters of the natural streams are subject to appropriation for domestic, agricultural, and manufacturing purposes.

Mr. SMITH of Arizona. And mining purposes.

Mr. THOMAS. Which includes mining; and they take priority in the order in which I have stated as to use. The superior right is the domestic one; the second in importance is the agricultural one; and the last is the manufacturing one. When there is not water enough for the three, the right of appropriation is in the order named. The two first are enjoyed by consuming the corpus of the water. The last generally applies to the power which is generated by the current without diminishing its volume; and of course that use is generally consistent with the others, or largely so.

Mr. VARDAMAN. What is the first use?

Mr. THOMAS. The domestic use; that is, water for the use of the family, for watering stock, and for those other things that are essential to the enjoyment of life.

These appropriations can be made in my State to be used wherever the appropriator needs to apply them. That may be 1 mile, it may be 10 miles, it may be 50 miles or more from the stream; but the power to appropriate and the power to use at the point where the use is needed necessarily involves the power to transport and, if necessary, of condemning a right of way therefor. Suppose that I or any citizen in the exercise of this right desires to utilize the water at some point and for some purpose not consistent with or in a manner different from that provided in this law but within the provisions of the State law, certainly there is a conflict; there necessarily must be a conflict. If the owner of a reservoir used for the generation of power transfers or permits the use of any of the water of his reservoir for the purposes of irrigation and agriculture, that creates a right, and, when once granted, the beneficiary can not be deprived of it. And it may well be that in the conflict between the rights which I have supposed—and I might suppose a good many others—and the lessee from the Government of the United States the laws of the State would either have to be recognized in such a way as to come in conflict with the Federal law or the enforcement of the Federal law would be such as to make it necessary to ignore the State law.

Such a conflict can be determined only through the department, or by litigation, or by both. We all know in our section of the country how extremely expensive are the controversies

with governmental representatives and agencies. They frequently—in fact, I think in a majority of cases—involve a trip to the Capital; the delay consequent upon their consideration is always extremely annoying, and in many instances practically destructive of the remedy when it shall have been secured.

But, Mr. President, the constitution of my State, ratified by Congress and approved by the President, in Article XVI, section 7, provides:

> That all persons and corporations shall have the right of way across public, private, and corporate lands for the construction of ditches, canals, and flumes for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation.

The State could own no lands of its own before it came into existence. Consequently, there were no public lands to which this section could apply except those belonging to the Government of the United States. The provision for this right of way across the public lands for these purposes, therefore, must refer to the public domain. I think I shall demonstrate before I conclude that that is a perfectly legitimate exercise of State power, and that in the semiarid-region countries it is an absolutely necessary exercise of the supreme and plenary power of eminent domain of the State.

Under this provision John Smith, as a corporation organized under the laws of the State of Colorado and obtaining his water right for the generation of electricity under its laws, may invoke the constitution of his State by securing a public right of way as well as the lands necessary for the construction of his buildings. We have statutes, to which I shall refer presently, which, recognizing this right, provides for methods of its exercise. The John Smith Co. having exercised that authority, if the Robert Roe Co., lessee of the Government, makes a similar appropriation, with reservoir and rights inconsistent or in conflict with either the right of way or the reservoir or the volume of water, which may not be sufficient for both, how can there be a compliance with or a recognition of the laws of the State without doing violence to the provisions of this act which makes the factor of recognition important? How is it possible to apply this law practically to the conditions which must conform with it when we find such potential evidences of conflict between the two as to make them irreconcilable?

I have no doubt that the constitutions of the other semiarid States contain similar clauses; but whether they contain them or not the right of condemnation is there. It does not depend upon constitutions. It is plenary, and it is limited only by the exceptions which are imposed by the constitutions of the States or of the United States.

For the present, Mr. President, I shall not refer to all the terms of the bill; but I shall refer to the provision regarding control of those enterprises which are common to two or more States, jurisdiction over which is extended to the Interstate Commerce Commission.

It is not probable, Mr. President—though there may be cases of which I know nothing—that a corporation generating power and furnishing it to more than one State is incorporated in more than one State. That is to say, these corporations, like others, are a single body. Now, a corporation created under the laws of the State of Arizona, generating power in that State and extending its lines into the neighboring State of California, would under this bill come under the jurisdiction of the Interstate Commerce Commission; but the same company, if it limited its operations to the State of Arizona, would come under the jurisdiction of the public utilities commission of that Commonwealth. We can readily understand the principle upon which control is given to the Interstate Commerce Commission with reference to so much of the business as may lie outside of the State where the power plant is situated; but I am unable to perceive how the Interstate Commerce Commission can take charge of a corporation under those circumstances and regulate and fix its charges in Arizona, and at the same time harmonize with the requirements of the laws of that State concerning that and other corporations. Of course it can do so by conforming to the laws of Arizona; but by the very fact of thus conforming it reveals the necessity of doing so in order to regulate it, and that is not regulation. That is merely compliance with the requirements of another set of laws to avoid difficulty. I question the power of Congress, in other words, to extend the jurisdiction of the Interstate Commerce Commission over a situation of that sort. It may be that this can be explained to my satisfaction. But to my mind—and I have examined the matter with some care—it seems to me to be a very serious objection to the details of the bill.

That reminds me of another which seems more serious. It is provided that at the end of 50 years there may be a recapture of the property—that being the expression used by the Senator from Montana in his report. The Government will not let go of these enterprises. It will make a lease for a maximum of 50 years, and at the end of the lease, under certain circumstances, it may be renewed, or it may be given to some one else on the condition that the new lessee shall compensate the old one for his property, or the Government may take over the enterprise at the end of the lease and operate it on its own account.

Now, let us see what situation that would produce or might produce. The Government of the United States—this great Republic, organized for the general welfare by the people of the United States—at the end of 50 years takes possession of an enterprise situated in the State of Colorado which I have built up under a lease from it at the end of my leasehold interest. The Government of the United States may operate that plant just as my company operated it. We are confined entirely to the Commonwealth in our distribution of electric current, and consequently our public-utilities commission had jurisdiction of the business. As a result, the Government becomes in practice a corporation of the State of Colorado, a corporation amenable to its laws, a corporation subject to punishment and forfeiture by the laws of the State of Colorado if they are violated, a corporation required to comply with the provisions and the rules of our State public utilities commission, a corporation whose right can be foreclosed in the event there should be a disregard of its legal requirements.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Montana?

Mr. THOMAS. I do.

Mr. WALSH. Does this bill provide that at the end of the 50 years, or any other leasehold period, the Government must take over this plant and must operate it?

Mr. THOMAS. No; but it provides that it can do so.

Mr. WALSH. Ah!

Mr. THOMAS. It may do so.

Mr. WALSH. Ah! And if it can not do it, it would have to make some other disposition, would it not?

Mr. SMITH of Michigan. No.

Mr. THOMAS. Well, I do not think so. I think it could operate the plant or hang it up, just as nearly everything else is hung up now, under the modern policy of conservation.

Mr. WALSH. Let me make an inquiry of the Senator. The bill does not contemplate that the Government shall now operate the enterprise. It contemplates that it shall turn it over to a lessee; does it not?

Mr. THOMAS. The bill does not, of course, contemplate that the Government shall operate it in the first instance.

Mr. WALSH. No. It contemplates turning it over to a lessee; does it not?

Mr. THOMAS. It may turn it over to a lessee; yes.

Mr. WALSH. Exactly. Now, why should it not be likewise contemplated that at the end of 50 years it will turn it over to another lessee?

Mr. THOMAS. The bill merely provides that it may do so. Or it may acquire the plant.

Mr. WALSH. Then, why does the Senator discuss the question of the Government operating it and coming in contact with the State regulations?

Mr. THOMAS. I am discussing that because, under the terms of the bill, the Government can do so if it desires. I discuss it because the manner in which the bill is drawn invests the Government not only with the power of lease but with the power of recapture and operation. Consequently, Mr. President, I am justified in calling attention to the absurdities in which this bill might involve the United States with reference to its relations to a purely business matter within the limits of a State.

Mr. WALSH. Mr. President, I want, then, to ask the Senator to point us to the clause which says that the Government may take the plant and operate it.

Mr. THOMAS. If the Senator asks me to point out in terms anything in the bill which declares that the Government shall operate it, I will say that I can not lay my finger upon that exact language; but if the Senator maintains, from the fact that no specific power is given to the Government to operate it, that no such power exists, then I must contend that it is not necessary to grant it in specific terms. If the Government takes over a property of this kind, it either must lease it or it must operate it, or the property will go to ruin. If it lets it alone, it will go to ruin. Now, is it possible that the Senator is advocating here a bill which provides for a method

of recapture that becomes useful only in the event the Government can find another lessee?—which I do not think it can do. I do not think it will ever find an original one under this bill, so far as that is concerned.

Mr. WALSH. Why, Mr. President, if the Government could not operate, did not want to operate, and could not find another lessee, as a matter of course it would not take it over. If it ever does take it over, it will be because it has found another lessee or because it is going to operate it itself and can operate it.

Mr. THOMAS. The bill should say that in very explicit terms, then.

Mr. WALSH. It does. It gives the Government the right to take it over at the end of 50 years.

Mr. THOMAS. I differ with the Senator in that regard, and I believe that the position which I have endeavored to present is the one which is justified both by the purpose of the bill and by the obvious necessity of operating the plant in the event no new lessee can be discovered. It can take the plant over; it can renew the lease; it can lease to another; it can do nothing.

Mr. President, I have said that this is a departure from the general policy of the Government with regard to its land administration, or, rather, the beginning of a departure which is so radical that it deserves very serious consideration before we embark upon it. I refer to the leasehold provisions of the bill.

Mr. President, when the Senate adjourned yesterday afternoon I had called attention to some of the detailed recitals of the bill under consideration and was about to discuss the subject from a somewhat broader standpoint. I wish now to revert for a moment to what was said yesterday regarding the so-called subject of recapture and that section of the bill in which the Government reserves that right. The Senator from Montana [Mr. WALSH] challenged the soundness of my criticism that in the event any lease granted under this bill shall have expired and the Government shall have taken the plant over it might operate the property on its own account. I think a careful reading of the fifth section of the bill more than justifies the conclusion which I announced yesterday. There are two sections relating to the subject, the fifth providing for a taking over of the property by the Government, the sixth for a renewal of the lease or for the granting of another lease to the same property to a new lessee. Section 5 provides—

> That upon not less than three years' notice, the United States shall have the right upon the expiration of any lease to take over all the properties constructed, acquired, or owned by any lessee, and valuable or serviceable in the development, generation, or transmission of electric current, or in the storage or distribution of water to the point of delivery to irrigation or domestic water systems, which are dependent in whole or in part for their usefulness on the continuance of the lease herein provided for, or the right to take over, upon mutual agreement with the lessee, a severable and complete unit of any such power system, upon condition that it shall pay in a lawful warrant drawn on the Treasury of the United States, or otherwise, before taking possession the fair value of such property.

Provision is then made for determining the value of the property in the event the Government shall elect to exercise this right of recapture.

It will be observed that in this section there is no reference whatever to a renewal of the old or to the making of a new lease upon the property. This does not contemplate anything of the sort, and it puts the Government in the ridiculous position of reserving a so-called right of recapture and then letting the property lie idle and unused if it does not carry with it as a necessary incident the power to operate the recaptured property upon its own account.

Mr. WORKS. Mr. President——

The PRESIDING OFFICER (Mr. MARTINE of New Jersey in the chair). Does the Senator from Colorado yield to the Senator from California?

Mr. THOMAS. I yield.

Mr. WORKS. I should like to ask the Senator from Colorado whether he understands by that provision that the Government could take over water rights that had been acquired?

Mr. THOMAS. I was just coming to that.

Mr. WORKS. Very well. I am sorry I interrupted the Senator.

Mr. THOMAS. The interruption does not interfere in the slightest, and I am very glad to yield at any time to the Senator. Here is the language. I will read it again:

> Valuable or serviceable in the development—

And so forth—

> or in the storage or distribution of water to the point of delivery to irrigation or domestic water systems.

The Government, in the event it exercises this reserve right and takes over a plant or an establishment which, in addition to the generation of current, supplies water for irrigation or domestic purposes, must necessarily continue that function of the property taken over, or else those dependent upon the water for those two prime purposes of life might not only be subject to serious menace to health and to life, but their crops would be menaced by destruction through the inaction of the Government, which by recapture had taken possession and acquired the ownership of the property. I think, therefore, Mr. President, that my assertions of yesterday regarding recapture were within instead of without the provisions of the bill.

Mr. JONES. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Washington?

Mr. THOMAS. I yield.

Mr. JONES. Would it not also be true if the Government did take over these water rights and ceased to use the water under the State laws it would lose its right?

Mr. THOMAS. Yes; the United States, of course, like any other owner of water, under State laws would subject itself to forfeiture by nonuse; but in the meantime what would become of the irrigation or the domestic interests, or both of them, dependent upon their constant supply?

Mr. WORKS. Mr. President——

Mr. THOMAS. I yield to the Senator.

Mr. WORKS. I should like to know what the Senator thinks about the relations that would exist under those circumstances as between the Government and the State.

Mr. THOMAS. I discussed them yesterday.

Mr. WORKS. I am sorry I missed what the Senator said on yesterday.

Mr. THOMAS. I am indebted to the Senator for my presentation of that phase, because I followed the minority report which the Senator prepared, and which I think covers the whole situation.

But, Mr. President, in this recapture a far more serious situation is involved, for the Government not only takes over to itself the land forming the subject of the lease, but also the water right theretofore belonging to the company and necessary for the generation of power, and which, if I understood yesterday the Senator from Montana, having charge of the bill, is recognized as a State property or something acquired through the agency of the State by the lessee from the Government, and, of course, absolutely necessary for the carrying on of the business.

Mr. MYERS. If the Senator will permit me just there——

Mr. THOMAS. Certainly; I yield.

Mr. MYERS. If the Federal Government would take over the work, I do not think the Federal Government would become the owner of the water. It would own the plant and would succeed to any right of the leaseholder as an appropriator of the water, and would thereby become an appropriator of the use of the water.

Mr. THOMAS. That is stating, I think, in different terms my own proposition. It takes whatever ownership the company has acquired either by location of the appropriation of water itself or by securing the appropriation of others. There is a transfer of whatever the owner of the plant has in the water, whatever title he has acquired in the water from the State, to the Government of the United States. We would therefore have the United States in this position, through a measure designed to develop hydroelectric energy and based entirely—because it must be so based—upon its ownership of the land necessary for the general enterprise, it becomes through its power of recapture the owner of the use of the water in addition to its land ownership arising wholly through the operation of the State law.

Mr. President, that is a pretty serious situation with which to confront the agricultural industries of the semiarid West.

Mr. WALSH. Mr. President——

Mr. THOMAS. I yield.

Mr. WALSH. Before the Senator passes from the subject he has just been discussing I wish to inquire of him whether the same situation will not be presented under the provisions of the Shields bill, which permits the occupancy of a navigable stream for a period of 50 years and at the end of that period of 50 years permits the Government to capture the work in connection with it.

Mr. THOMAS. I think I so stated in the few remarks I submitted when that bill was under consideration.

Mr. WALSH. So, as far as that is concerned, they stand upon exactly the same footing.

Mr. THOMAS. I think they stand in their effect upon substantially the same footing.

Mr. WALSH. I mean so far as the operation is concerned.

Mr. THOMAS. So far as the operation of the two laws is concerned, they might produce identical results. But, Mr. Presi-

dent, because one vicious bill has been enacted or is about to be enacted by Congress is no reason why we should enact another.

Mr. WALSH. I quite agree with the Senator. I wish to ask the Senator if he voted for the Shields bill?

Mr. THOMAS. I certainly did not, and I was very much tempted to oppose it to the end. I did not do so because it does not directly affect the people whom I in part represent here and also because those who are advocating the bill seemed to feel that the urgent necessity for some sort of relief justified such concessions to the governmental demand as seemed to be necessary to secure any relief whatever. But, like all compromises of a great question or a great condition, they seem to have fallen between two stools. The bill is not satisfactory to men who believe as I do about it. It is not satisfactory to those of the extreme type of conservationists, and who presented the most formidable opposition which the bill encountered. Inasmuch as it gives no satisfaction to either I do not know whether it will ever become a law or not. If I consulted my own feelings, I would hope that it never would be written upon the statute books.

Mr. MYERS. If the Senator will permit an observation right there, I wish to call his attention to the fact, which, of course, he knows as well or better than I do, that the United States Government may appropriate water in the streams of a State now, and there is no difference between that right and a right acquired by acquiring the right of a prior appropriator. They stand on the same footing.

Mr. THOMAS. I said yesterday if the Government of the United States at any time needed the use of the waters of the natural streams in the arid States, it could acquire them only by complying with the State law, but I do not think the Government, certainly not without some statute upon the subject, would have the right in the Senator's State or my State to make an appropriation of water for the generation of power, certainly not for the purpose of selling that power to consumers, coming in competition with its own citizens.

Mr. WALSH. Let me ask the Senator from Colorado if the Government is not doing just that now in the case of Arizona? Does not the Government operate a great power in the State of Arizona?

Mr. THOMAS. Does the Senator contend that the United States is operating a power plant under appropriations conforming to the laws of the State of Arizona and selling the power to consumers?

Mr. WALSH. That is my understanding about it.

Mr. THOMAS. If that is the case——

Mr. SMITH of Arizona. The Senator will understand that we make no claim that the Government will permanently use that power.

Mr. WALSH. That is not the question.

Mr. SMITH of Arizona. The obligation rests on the people to pay back into the Treasury the ten or twelve million dollars that have been advanced.

Mr. WALSH. Exactly. The Government is carrying on a great irrigation project in the State of Arizona and incidental to that project there is power developed. They have diverted the water for irrigation, and they use that same water for the development of power, and they are selling that power to the city of Phoenix.

Mr. THOMAS. Mr. President, the Supreme Court of the United States in the Kansas-Colorado case, reported in Two hundred and sixth United States, decided that the Federal Government is without any constitutional power to go into the business of reclamation in any State of the Union. That decision has received no sort of consideration so far as I am able to judge in the Agricultural and Interior Departments which administer the reclamation system, and the fact that the Government in addition to proceeding with these reclamation projects unites to it the right to build a power plant and to generate current and sell it indicates to my mind the wisdom of the decision of the Supreme Court to which I have just referred on the one hand, while it emphasizes my contention upon the other, that this matter of recapture means, and necessarily must mean, that in the event it is done the Government of the United States will go into the business under State laws of generating current on its own account and selling it to the consumers of the country.

Now, that may be a desirable thing to do. I am quite willing if it becomes the universal practice, and if for the purpose of preventing monopoly it becomes necessary for the Government to embark in the business to accede to it, but to accede to it in a proper way, and that is by determining expressly through legislative action that such shall be its policy.

But in the case mentioned, Mr. President, in a reclamation project, the waters are gathered together under appropriations and conserved in a huge reservoir, primarily for the purpose of reclaiming the lands of the Government, lands which but for such a system would always remain waste and contribute nothing to the benefit and welfare of human kind.

It may possibly be that assuming—and, of course, we must assume it, notwithstanding the opinion of the Supreme Court, these great projects having gone ahead and which are very beneficial—assuming that the Government has the power of reclamation of its own land in the States through the accumulation of large bodies of water, where, through a permanent reservoir system, it may be utilized for the cultivation of waste places of the earth, there is also a power brought into existence, that power may be utilized by the Government for the benefit of the people upon that reclamation project, without in any manner affecting the argument I am attempting to make. Of course that assumes also, which the law provides, that ultimately the people who take up this reclaimed land shall take over both the reservoir and the system of canals and everything appurtenant to it.

But I do not believe, Mr. President, that the existence of such conditions in any way militates against the position which I think the bill will put the Government in in the event it becomes a law. The Government did not file upon water, make appropriations of water, through a compliance with the local law, for the purpose of building a power plant, of generating power, and of supplying customers who were dependent upon the supply for the carrying on of their business and for whatever purposes it was necessary for them to use it. I think if the Government had attempted anything of that kind it would have been confronted at the threshold with the question of power, whether any particular agency or function of public administration required or permitted anything of the sort. If not, then certainly no such authority would exist.

So I leave this branch of the discussion with this statement, when the Government exercises its power of recapture it takes back not only what it had before but an ownership in water granted by the State to its lessee, which it did not have before, and which by the alchemy of national legislation it attaches to itself. That is one way to confiscate property. It is one way to deprive a State of its right and ownership of an element which is absolutely essential to its economic existence.

Suppose, Mr. President, that the Government, after making these recaptures, should sit supinely by and do nothing, who can compel it to set the wheels in motion? Can the State do it? Possibly, but how? By the use of physical force? Not at all. By legislation? That depends upon the attitude which the Federal courts would take upon the subject. But theoretically it is and ought to be impossible for an outsider, even though a mutual or a dominant sovereignty, to come within the domain of that sovereignty restricted only by self-imposed limitations and acquire an element or the control of an element, wholly or in part, the existence and use of which is absolutely essential not only to its welfare and well-being but in a large degree to its very existence.

A law which would permit it, although the power might be exercised humanely, generously, and beneficially, is a dangerous law not only in the abstract but as a precedent for legislation of similar and possibly of far more serious character.

I said, Mr. President, yesterday when the Senate adjourned that this bill attempted, among other things, to initiate a departure from the general land policy of the Government and was one of a series of measures designed ultimately to withhold from purchase and settlement practically all the remaining domain of the Continental United States outside of Alaska and permit the use of them only by the people of the country.

I feel, therefore, that even if the bill in its details was perfectly satisfactory, a departure so vast in its reach and so tremendous in its operation should not be entered upon without very serious consideration of its objections.

The policy of the Government, with one exception, ever since its organization down to the commencement of the twentieth century has been to dispose of its domain to actual settlers and purchasers. That has been not only its policy, but in the acts of concession made by the original States to the Government it was expressly provided that the land should be so disposed of, that Commonwealths might be erected through the attraction which cheap land would offer not only to the people of this but of other countries.

That policy was carried out. It began with what are now the States of Ohio, Kentucky, Tennessee, Alabama, and spread westward from the first States which were admitted until it traversed the Mississippi Valley, extended to the foothills of the Rocky Mountains, and finally reached the shores of the Pacific Ocean. Had the policy which this bill seeks to introduce been that of our fathers the hundred million people who to-day joyfully give their allegiance to a common Government and a

common flag would perhaps not exceed one-third of that number, and these would constitute a nation of tenants instead of a nation of landholders, a citizenry dependent upon a universal landlord called the Government instead of a citizenry rooted to the soil, representatives of Anglo-Saxon ideals and exponents of Anglo-Saxon liberty. Away back in 1825 Mr. Webster, then a Member of the United States Senate, said upon this subject:

> The great object of the Government in respect to those lands is not so much the money derived from their sale as the getting of them settled.

When he said that he expressed what was then a generally and universally conceded proposition, one the denial of which would in all probability have created the profoundest surprise.

At one time the Government did enter upon a leasing policy with regard to some of its mineral lands, notably those in western Illinois, where the city of Galena now stands. It was found so unsatisfactory, so expensive, and so ill in accord with our policies and our theories that upon the recommendation of President Polk, I think, the policy was abandoned; and it remains for us of this generation to seek to revive it in widespread form and to apply it now to all mineral lands except those containing metals and to the agricultural lands of the country. The bill proposes to lease those small pieces of territory which by reason of their natural location and physical characteristics are more suitable for power sites than anything else.

Another bill which has been introduced and which is upon our calendar, the passage of which will doubtless be pressed at this session, seeks to provide for the leasing of all lands containing oil, gas, phosphates, and other salts and solutions; and if I am not mistaken it also provides for the leasing of coal lands. The lands of the West containing these deposits are very large in extent, and as a preliminary to the operation of this proposed measure the most of them, constituting millions of acres, have been withdrawn from location and private sale.

The only reason why the gold mines and lead mines and copper mines and silver mines are not included within this general scheme is that the sentiment of that section of the country where those mines are located has been strong enough thus far to limit this new purpose of administrations and of departments to other so-called mineral lands not known as metalliferous. The time is coming, Mr. President, in my judgment, it must come, if we enter upon a leasing policy, when it will not only embrace the gold mines in the State of Montana, the silver and lead and other metalliferous deposits in the State of Montana, but those in all of the other States. Then it will be but a step to the reservation of all of the remaining agricultural lands of the country. I am told that a bill, called the Lever bill, having the latter for its purpose, has been introduced in the House of Representatives and has been at some time considered, although not reported, by the House Committee on the Public Lands. I am not surprised at it. It is but the logical sequence of a new dispensation which finds its first actual expression upon this floor in the bill which we are now considering.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Idaho?

Mr. THOMAS. I yield.

Mr. BORAH. What do I understand to be the provisions of the Lever bill to which the Senator refers?

Mr. THOMAS. It is a bill which is designed to reserve all the lands of continental United States from occupation and patent. My authority for that is one of my colleagues in the other House. I have not myself seen the bill.

Mr. WALSH. May I ask the Senator to what end is that proposed?

Mr. THOMAS. It is to the end that the Government may retain the title and allow its citizens to secure the benefits through contract and lease. I do not know what other purpose could be subserved by it.

Mr. WALSH. Does the Senator feel that there is sentiment enough in the other House to give much encouragement to that proposition?

Mr. THOMAS. Not now, but it is growing; and it will receive a powerful stimulus from legislation of this sort.

The homesteader to-day can not get a deed in fee simple to a piece of Government property. When the Senator and I first went West, the homesteader and the preemptor got a deed, giving him an absolute title in fee simple to his 100 acres of land, with no reservation whatever. Now, gold, silver, coal, salts, gas, oil, every conceivable thing except the bare surface, is exempted and reserved from the title, together with the right of development of the same if any should be exposed thereon or thereunder. Scarcely a week passes that I do not receive a letter of protest from some patentee who, upon reading his title, finds that he has acquired the right to live upon the surface, but that the Government practically retains everything else that he supposed he was getting under the laws of his country when he endured the privation and incurred the expense of occupation.

Mr. WALSH. Mr. President, I do not like to interrupt the Senator——

The PRESIDING OFFICER. Does the Senator from Colorado yield further to the Senator from Montana?

Mr. THOMAS. I yield.

Mr. WALSH. But I think the statement which the Senator has now made ought to have some further explanation. The law is just exactly the same now as it always was. If a man enters a homestead he gets absolute title, without any restrictions whatever, and he owns everything there is in that homestead; but under the old law he could not take any land in which it was believed there were minerals of any kind. Now, he can go and take that land which is mineral in character; he acquires a surface right in that land, and the minerals are reserved. We have all asked for that law out West.

Mr. THOMAS. I hope I have overstated the situation, but I have stated it as I understand it.

Mr. WALSH. The situation of the law, as I think the Senator will find, is as I have stated it.

Mr. THOMAS. I am obliged to the Senator for correcting me whenever he thinks I make a mistake or a misstatement. My impression is, however, that the present method of issuing patents is universal. If it is not so, then, of course, I stand corrected.

Mr. WALSH. If the Senator will permit me, the situation is just this: A man enters a homestead. He may now make proof in three years. The Government will not let him enter it as an ordinary homesteader if the land is known to be mineral in character; but he enters a tract of land that is not known to be mineral in character, but, between the time he makes his entry and the time that he comes to make proof, it is discovered that there is coal in the land. Under the old law he could not get title to that land at all, but now the Government gives him a patent entitling him to the surface, reserving the minerals to the Government.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Idaho?

Mr. THOMAS. I yield.

Mr. BORAH. Does the Senator from Montana understand that these exceptions or exemptions in the patent apply only to those lands where there has been a discovery of actual metal, and so forth?

Mr. WALSH. No, Mr. President; but certain lands are marked off as coal lands, and those you may enter, knowing beforehand that they are thus classified.

Mr. BORAH. Exactly.

Mr. WALSH. And you get the same right there now. Under the old law you could not enter that land at all. That was always the law. There never was a time when you could take a homestead of land that was marked out as containing mineral of any kind.

Mr. BORAH. Permit me, then, to put it in a different way, for I do not think the Senator understood me precisely. In all instances where these exemptions are made, does the Senator contend that it has been classified as mineral land or that bebetween the time of entry and the patent they have discovered mineral thereon?

Mr. WALSH. Exactly.

Mr. BORAH. That is the theory, but that is not the practical working of it.

Mr. WALSH. How does it work?

Mr. BORAH. There are numerous instances I know of which have come under my observation, as the Senator from Colorado [Mr. THOMAS] says, by letter, and so forth, in which, while it is claimed that there is mineral in the land, there has been no discovery whatever, and no mineral exists there, so far as any evidence now to be had can demonstrate it.

Mr. WALSH. The Senator, of course, will appreciate that in marking off these lands as coal lands, or lands valuable for oil or valuable for phosphates, they undoubtedly often embrace areas that are too large; we have all complained about that; and I stand with the Senator from Idaho on that; but that is not the point. They are classified as mineral lands.

Mr. BORAH. Exactly. You could classify the best alfalfa lands in the West as mineral lands.

Mr. WALSH. But, of course, that is a matter of administration. I admit that.

Mr. THOMAS. Mr. President, under the former policy, lands were classified generally as either mineral or agricultural. Those which were classified as mineral were presumably so, and they could be entered and prospected as such. The others, which were classified as agricultural lands, could be homesteaded, and the patent would carry everything that an ordinary private conveyance in fee simple would carry. So long as the classification stood—but, of course, it was not an actual one, not strictly correct, because there was frequently nonmineral land in mineral classifications, and vice versa—but so long as that stood, the distinction, though arbitrary, was pretty well lived up to.

The grant by the Government to the Union Pacific Railroad Co. of every alternate section was a grant of agricultural land, and the mineral lands were excluded, as was the case with all these grants. In some sections of the country which were traversed by this particular right of way, and in the northern and the northeastern part of my State the Union Pacific Railroad Co. began about 25 years ago to insert in its conveyances to individuals a reservation of any coal that might be afterwards discovered within its lands. It discovered some coal, in some instances indications of coal, in one of the most widely extended agricultural regions of my State. In that section, which is devoted almost, if not entirely, to agriculture, either because there has been a reclassification of the land as mineral, or because the Government is seeking to follow the example—the frugal example—of the Union Pacific Railroad Co., or for some other reason, these exemptions apply, and to the fellow who has taken advantage of the largess of his Government and has moved his family upon a quarter section and spent his money and his time upon it, it is a very poor comfort to know that land which is really agricultural and is or should be so classified somewhere, that a great portion of its value is withheld from him by the Government, which he is taxed to support.

Of course, as I said before, I recognize that there have been great abuses of the land laws of the United States, but I also must always reiterate the proposition that these abuses were not the outgrowth of State laws nor of State administration, but of Federal laws and of Federal administration. It is pretty hard to be punished for something for which one is not only not guilty, but which he was entirely unable to prevent.

Mr. President, I think that every man in or out of Congress is opposed to a general tenantry system in this country. We do not believe in it. There is about it that lack of genuine independence which the ownership of the soil or the freehold gives. There can be no such thing as a virile, patriotic nation composed of tenants or composed in the most part of tenants. One of the purposes of our Federal farm-loan bill is to do away with the constantly growing evil of increasing tenant farming, to the end that such assistance may be furnished through the statutes of the United States and their operation as to minimize, if not to do away with, that evil.

If I understand the reason which underlies that general feeling of antipathy to the tenantry system, apart from the experiences of other nations with whose history we are familiar, it is that the dependence, that ownership of the man which comes from ownership of the soil, is inconsistent with the institutions of a free people. I do not believe that when this Government was organized it was ever imagined that it would become the owner of a widespread continental domain, or that, if it should acquire such domain, it would pretend to hold any part of it in perpetuity. Certainly if that had been imagined, the Louisiana purchase would never have been accomplished, and the treaty of Guadalupe-Hidalgo would have contained conditions and requirements imposing upon the Government the duty which for the rest of the century it carefully observed in the disposition of its land.

What we want in this country is population. What we desire is a fine citizenship. What we desire is the spread of our institutions among a liberty-loving, landholding people. What we need above all things, Mr. President, is to attnch as many people to the soil permanently as possible. The man who owns a farm is very seldom a lawless citizen; the man who has something invested in real estate somewhere is almost always a dependable citizen; and the men not so situated generally comprise within their numbers those elements which are more or less dangerous to the future and the welfare of the Republic. Of course, I am speaking in general terms. Hence, unless the ideal conditions which we strive for are compatible with the leasing system, we should not under any circumstances adopt it as a national policy.

One effect—and I think my friend from Montana will agree with me—of the wide extension of the Forest Service has been to do away very largely with the old prospector. It may be said that these lands are still open to the locator and prospector; and in a way, Mr. President, that is true. The right to prospect for and locate mining claims in forest reserves exists, or to acquire a homestead is largely an abstract right; the prospecting must be carried on under so much supervision by those in charge of the reservations that it is not as active as it once was, and I think it is becoming less and less so all the time. I thought I had a copy of what is known as the Use Book in my desk. I wanted to show it to the Senate that they might see from its bulk and from the multitude of its regulations just what seems to be necessary for the proper administration of their affairs.

Mr. SHAFROTH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to his colleague?

Mr. THOMAS. In just a moment. There are rules, and then there are more rules; there are regulations, and then there are counter regulations, the whole constituting a pamphlet half as thick as the one I hold in my hand and numbering, I think, some 150 pages. You encounter them from the moment you step upon the reservation; you are confronted with them at every turn of the road; and you can hear their echoes as you leave the borders on the other side. Now, I yield to my colleague.

Mr. SHAFROTH. Mr. President, does not the principal obstacle to the prospector arise from the fact that, after he has made his application for patent, an expert, or a supposed expert, is sent from the department to ascertain whether it is reasonable to suppose that his mine will become a pay mine?

Mr. THOMAS. That is expressing perhaps concretely what I was trying to say. The power of determining whether he has discovered something worth patenting or not is largely taken from him. Now, generally speaking, the prospector knows his business; he makes a great many mistakes; but he knows more about a mine and about those geological and physical indications which may justify the expenditure of money or the making of a location than the best mining engineer that I ever saw, to say nothing of the ordinary Government employee, who, whatever his theoretical knowledge may be, is not in the same class with the prospector.

Let me give you an illustration. Cripple Creek is the greatest gold camp to-day, in all probability, in the United States, and has been for years. In 1890 it was a cow pasture. It was regarded as entirely outside of the mineral belt. The central 160 acres where the town of Cripple Creek lies, were patented as an agricultural claim. Some unfortunate farmers in Kansas and western Nebraska, impoverished by drought, drifted westward, went to what is now Cripple Creek, and began prospecting for minerals. They were ridiculed by the old miners who referred to them in terms far more contemptuous than elegant. They were commiserated by men of scientific attainments. They discovered gold by digging beneath the surface, since the veins did not outcrop; and it was only after they had proven by the actual development of the ground that they had located a great gold-bearing region that the people "sat up and took notice," so to speak, and that the tyro had discovered gold where gold was not supposed to be; where geologists said it was not; where the opinion of the mining world was against it; and where it never would have been discovered, Mr. President, if at that time it had been included within a forest reserve. In other words, the spirit of enterprise and energy which peopled the West, and which is behind our mineral development everywhere, has been and is being largely paralyzed by this mistaken policy.

The oil out in the desert in California and on the plains of Wyoming, these great bodies of wealth were discovered by the energy and the expenditure and the hazard of men willing to take a chance, who thought they knew what the laws of their country are, and who believed they could find something to enrich themselves and enrich the Nation at the same time. If it had not been for that spirit, those vast reservoirs of oil, now so valuable and so necessary, in my humble judgment, never would have been exposed, and the desert would have remained the solitude that it was before they opened it up and revealed the existence of the marvelous treasure house. But the Government then came in; and since then, just as soon as a man erects a derrick on the public lands and reaches the point with his drill where the odor of oil assails his nostrils, it withdraws the land from further occupation, because, forsooth, there may be some violation of the law through the acquisition of title, or because the thing discovered should be conserved for future generations. Of course there are chances, large chances, for fraud in these conditions; but, Mr. President, that has been so ever since man came upon earth, and will continue, even under the leasehold system, until human nature shall undergo a most radical change.

I met a young man yesterday morning at the Willard Hotel, a constituent of mine. I was very much surprised to see him,

and asked him what he was doing down here. "Why," he said, "last year my friends and I entered upon some land in northern Wyoming, having gone to the land office and found that it was open. We organized a company, sunk a well, and found some oil. Our locations were all right, but a short time ago the entire tract was withdrawn, and I have come to see if it is possible to get some relief for my company." I asked him if he was making much progress, and he said, "Unfortunately, very little; but," he said, "if I do not get relief soon I am broke; I have got to take up something else." I suggested to him that he look for oil somewhere else. His reply was significant: "I may, but it will not be in the United States on the public lands." Now, I do not blame him a particle, for there is no inducement for a man to seek to better his condition by complying with the requirements of the law regarding locations, only to have the governmental authority step in at the critical moment and say "Because your efforts have been rewarded with success, therefore we will withdraw this land from occupation and purchase. Sometime, somewhere, somehow we may be able to inaugurate a leasing system, and then, if you desire to become Uncle Sam's tenant, we will see whether we can agree upon terms regarding your discovery." Such seems to be the attitude in administration circles.

Mr. President, I do not think that we should enter upon that system. I believe that the Congress should set the seal of its disapproval upon the first step in that direction; and I fervently believe, although I know that my distinguished friends from Montana are of the contrary opinion, that if this bill becomes a law it will prove a grave disappointment to its sponsors. I do not believe that it will attract capital, unless, perhaps, there be a few mighty streams not yet appropriated capable of generating enormous quantities of power, and therefore sufficiently attractive to command the capital necessary for development.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Montana?

Mr. THOMAS. I yield.

Mr. WALSH. I trust I am not annoying the Senator.

Mr. THOMAS. The Senator is not annoying me at all.

Mr. WALSH. There are so many Senators here exhibiting their deep interest in this important question that I feel moved to address a question to the Senator now for their enlightenment. The Senator does not want to lease the power sites, these immensely valuable tracts of land; and, of course, if he does not want to lease them he wants to convey them away in perpetuity—alienate them in fee. Have I interpreted the views of the Senator correctly?

Mr. THOMAS. Well, partly; not entirely.

Mr. WALSH. I understand from the Senator's minority report that he wants us simply to convey this land away to the States, pass a simple law reading something like this: "All power sites within the public-land States are hereby granted to the States, respectively." That is the attitude of the Senator, is it?

Mr. THOMAS. Yes.

Mr. SMITH of Arizona. Why not?

Mr. THOMAS. Why, Mr. President, I do not know that the value of a piece of the public domain has anything to do with the policy of the Government toward it. I know a mine to-day that pays $250,000 a month in dividends, which the Government sold to the locator for $5 an acre. Does the value of the property have anything to do with the policy which should actuate this Government with regard to its public domain?

Mr. POMERENE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Ohio?

Mr. THOMAS. I yield.

Mr. POMERENE. Mr. President, as I have tried to listen to this debate, not only to-day but on other occasions in years gone by, I have observed, it seemed to me, two schools of thought, one that seems to want these lands to be held by the Federal Government and to have the Government determine the conditions on which power-plant companies may be organized; while the other school of thought desires all of these lands to be turned over to the States.

Mr. THOMAS. Either that or disposed of so that the title may be acquired by citizens of the United States.

Mr. SMITH of Arizona. And be taxable.

Mr. POMERENE. I am glad to have the suggestion of the Senator from Colorado. Now, do the students of this question, whether they belong to the first school of thought or the second, agree as to the terms and conditions which should be attached to the water companies when they are in fact organized; and, if they differ, in what respect do they differ?

Mr. THOMAS. Well, I can not say, Mr. President, that we can agree. I do not know that we have tried to agree. The water companies and power companies in my State are subject to the public-utilities commission, just as the same class of corporations are presumably under the jurisdiction of the public-utilities commission of Ohio. I do not think that is a matter of agreement; that is a matter which each State must determine for itself; but, so far as I am aware, the efficiency of the State utility commissions in their administration of these matters is quite as satisfactory—well, I will perhaps say, more satisfactory than I think a general national public-utilities commission over the same subject would be.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER (Mr. PHELAN in the chair). Does the Senator from Colorado yield to the Senator from Montana?

Mr. THOMAS. I yield.

Mr. WALSH. A gentleman came to my office the other day, who wants to build in the State of Montana a great paper mill. He wants to develop power to supply that paper mill. He does not intend to sell one particle of that power, but he is going to use it all to operate his mill. What jurisdiction has a public-utilities commission over him?

Mr. THOMAS. Which public-utilities commission?

Mr. WALSH. Any public-utilities commission.

Mr. THOMAS. I do not think they ought to have any jurisdiction over him if he is simply manufacturing power to be used in his own private business.

Mr. WALSH. In other words, there will be an enormous amount of this power developed and utilized by those who develop it, and it never will fall under the public utilities commission.

Mr. THOMAS. Why should it? This identical gentleman can go and purchase some plant, if he can meet the amount required as a consideration, that is already in operation, and by using the current for his own private purpose he can doubtless escape jurisdiction of the commission, and ought to, as fully as though he were using steam instead of electric power.

Mr. WALSH. I should like to have the Senator, then, tell his colleagues here what kind of a law he would like to have made that would enable that man to occupy public land to build his dam in order to operate his paper mill.

Mr. THOMAS. I shall try to do that before I take my seat.

Mr. WORKS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from California?

Mr. THOMAS. I yield to the Senator from California.

Mr. WORKS. I should not like to have it understood, as suggested by the Senator from Ohio [Mr. POMERENE], that there are just two schools of thought on this subject, taking the extreme views mentioned by the Senator. My own position lies between those two extremes. I think if the Government is going to part with this land in any way, it should make an absolute sale of the land for whatever it may be worth for the purposes to which it may be applied; and in endeavoring to carry out that idea I have offered an amendment providing for just that thing.

I do not think we have quite reached the time yet when Congress is ready to turn over these properties to the States. I think it is going to come to that after a while; but I certainly should not be disposed to have this particular kind of property turned over unless the whole thing goes to the States, which I think will come about sooner or later.

Mr. JOHNSON of South Dakota. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from South Dakota?

Mr. THOMAS. I do.

Mr. JOHNSON of South Dakota. I only desired to ask the Senator from Colorado if it would not remove a great deal of objection, and be better in a general way, if all the leases were made so that after a period of, say, 50 years, the water power, for instance, would revert back to the State which is now the original owner of it.

Mr. THOMAS. Well, Mr. President, to me that would be preferable to the provisions of this bill; but my antipathy to the conversion of my country into a huge landlord is so great that I do not care even to consider the milder phase of such a system.

Mr. President, I did not intend at this time to speak upon the subject; but since it has been introduced by the queries which have just been made, I want to say in passing, that for years I have believed that the one solution of this entire question is the transfer to the respective States of all of the domain within their boundaries. I believe that that is the only way. It may not be the perfect way; it may not address itself to

the judgment of others as being the only efficacious way. When I compare the administration of our land laws and our domain by the Government of the United States with that of many of the States, with the administration of their school lands, and that of the State of Texas with the administration of its great domain, I realize that it is the most fortunate State in the Union. Every Texan, before he retires, should kneel at his bedside and thank God that the Government of the United States never owned any of its land. We would long ago have avoided the expense, the controversy, the litigation, the time which Congress has been obliged to devote to the general question—all these would have been spared and done away with—had that policy been adopted, as it should have been, many years ago.

Mr. President, I have spent more time in stating my objections to the landlord-and-tenant system of Government land administration than I intended to. I have assumed, perhaps wrongly, that the proposition is too self-evident to require much more than its statement to be rejected. I want to add, however, in passing, that it is true that these water-power sites are of great value. I do not question it. But what makes them of great value? It is the water, Mr. President, which can be utilized for the generation of electricity, which belongs to the people of the States. Take away from them the use of the water for this particular purpose, and 90 per cent of them are of no value whatever.

Is it possible that because they are valuable through the easy application of this great agency to a great public purpose, therefore the Government should play the dog in the manger, and refuse to allow us to use these sites, and refuse to use them itself, except upon terms and conditions which virtually amount to a confiscation of a great State asset? I think not; and until the Senate votes to the contrary I shall believe that such is the opinion of the majority here.

Mr. President, another objection which I have outlined to this bill is that in its operation it must encounter and seriously injure a function of the States, thus affecting the political integrity of the Commonwealths where it will be made operative. It is the exercise of a sovereignty—a foreign sovereignty, in one sense—over a subject which peculiarly belongs to the State, which can not be delegated, and which the Federal Government does not possess as to the particular subject. Every community which exercises public functions of government, whether it be a city of 1,000 people or a nation of 100,000,000, has the right, which it must exercise if it is to properly discharge its duties at all times, of taking over, or authorizing others to take over, such of the property within its jurisdiction, and sometimes outside of its jurisdiction, as may be essential to the public welfare. It is a right which can not be delegated. It is a right which is absolutely inherent in every nationality. It is a right which can not be controlled except by the limitations which the community itself imposes. I allude, of course, to the power of eminent domain, which the people of the States in their sovereign capacity as a Commonwealth, or certain subdivisions of the State in their capacity as municipal organizations, or public-utility corporations organized by law and to which are delegated certain semipublic functions, may exercise.

The bill goes upon the theory that unless the General Government shall give to the States, by express law, the right in some way to occupy these power sites and these Federal reserves and the other public domain of the United States, it will be impossible for them to develop their resources or to acquire such things as may be necessary for their well-being or essential, even, to their existence. In other words, it goes upon the theory that as to all the public domain within the limits of a State the Government of the United States is supreme; that this domain is over and above and beyond the jurisdiction and the laws of the State, and many good lawyers seem to have accepted that view. Recent decisions of the Supreme Court contain some expressions which are said to justify that view. I have sometimes heard it said before the committee in discussion, and I think once or twice it has been intimated here, that unless and until the Government shall legislate with regard to this subject we of the Western States are powerless, and the generation of hydroelectric current will remain stationary in the West. I am satisfied that when the Senator from Montana asked me how I would reach this subject without some Federal legislation he assumed that we could do nothing unless we did have affirmative Federal legislation. To that I can not assent.

Mr. President, I have been greatly assisted with regard to this particular branch of the discussion by one of the most eminent young lawyers at the bar of Colorado, who had occasion to present it to the United States district court some time ago in a case entitled United States of America against Colorado Power Co. I refer to Mr. William V. Hodges, of Denver, who exhausted the subject up to the time when his brief was prepared. I shall ask the indulgence of the Senate in referring to and at times in reading the argument of Mr. Hodges, since it is much more connected and systematic than any of my own without giving an equal degree of diligence to its preparation.

I referred yesterday to section 7 of the constitution of my State, which gives the right of way across all land, public, private, and corporate, for the construction of ditches, canals, and flumes for the purpose of conveying water for domestic purposes, irrigation, mining and manufacturing, and for drainage. That constitutional provision has been the subject of appropriate legislation providing methods for its exercise, and particularly by the legislature of 1915, which enacted a statute which I will not read, but merely refer to, the title of which is:

> An act relating to the appropriation of land for corporate and public purposes, to the procedure for the appropriation of land and rights in land belonging to the United States, the State of Colorado, or any other State or sovereignty, and to actions by property owners against such corporations in possession.

The act is an interesting one to the lawyer. It consists of five sections. It was very carefully prepared; and although it is perhaps an experiment in legislation, it assumes, as I think justly, the right to legislate upon the question, and of course the power of enacting the provisions which it contains. But that law and the provision of the constitution of the State to which I refer become absolutely nugatory; they are not worth the paper they are written upon if the assumption upon which this bill is founded be a correct one, since the power stops whenever public land is encountered whether it is withdrawn or reserved or not, and if it does so stop then the power of eminent domain in Colorado, instead of being coterminous with the limits of the State as is the case in the State of Iowa, extends only to a very small fraction of its domain.

My colleague [Mr. SHAFROTH] some time ago made a statement which the Senator from California [Mr. WORKS] inserted in his report on this bill, which will give an idea of the importance of this question, from the territorial standpoint, to the people of the West. The Senator said:

> I want to call the attention of the committee to a list contained in an article by Mr. W. V. M. Powelson of the number of acres of land in the various Western States now in the ownership of the Government. In Arizona, 92 per cent of the lands within the area of that State are in Government ownership; California, 52.58 per cent; Colorado, 56.67 per cent; Idaho, 83.80 per cent; Montana, 65.80 per cent; Nevada, 87.82 per cent; New Mexico, 62.83 per cent; Oregon, 51 per cent; Utah, 80.18 per cent; Washington, 40 per cent; Wyoming, 68 per cent.

It may be seen from that statement very readily, Mr. President, how unfortunate it would be if the State or its public-utility corporations could not traverse or obtain rights of way and reservoir rights in this vast domain and could not build public roads through them whenever and wherever necessary, because although owned by the Government as a proprietor and not in its sovereign capacity it happens to be in the hands of such owner. A situation of that kind or the integrity of the proposition which this bill necessarily embodies or is founded upon would be most unfortunate, to say the least of it, if it existed as a fact.

Mr. SMITH of Arizona. Then Arizona would have eminent domain over two twenty-fifths of its territory.

Mr. THOMAS. At the time the State of Colorado was admitted the only public lands within its domain belonged to the Government of the United States. Consequently this word "public" necessarily referred to the domain of the Government. It could not have attached to anything else. This constitution was ratified, and the President, by proclamation, declared the State duly admitted into the Union. The supreme court of the State in a number of decisions has passed upon this section, and given it the operation for which I contend. I shall not read from these decisions, but refer to Lyons *v.* City of Longmont (129 Pac., 198), to the case of Lamborn *v.* Bell (18 Colo., 346), to the case of the Denver Power & Irrigation Co. *v.* the Denver & Rio Grande Railroad Co. et al. (30 Colo., 204), to the case of Sternberger *v.* Seaton Mountain, etc., Co. (102 Pac., 168), and to a decision of the district court of the United States for the district of Colorado in Cascade Town Co. *v.* Empire Water & Power Co. (181 Fed., 1011).

Mr. President, I stated yesterday the necessity for this provision, which I think, however, would exist inherently in the State if indeed it were not expressed in the constitution at all.

Mr. NORRIS. Mr. President, will the Senator read that constitutional provision again?

Mr. THOMAS. I shall be very glad to do so. It is section 7 of Article XVI.

> All persons and corporations shall have the right of way across public, private, and corporate lands for the construction of ditches,

canals, and flumes for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage upon payment of just compensation.

As I say, that is merely the expression of a power which is plenary, which is inseparable from sovereignty, which a State can not delegate, which would be nugatory if the United States required its surrender as a condition of the admission of a new State, as the Supreme Court of the United States has said.

Mr. WADSWORTH. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from New York?

Mr. THOMAS. I yield.

Mr. WADSWORTH. Am I very far wrong, then, in stating that under that constitutional provision of the State of Colorado it is possible for a citizen of the State, in the exercise of that power granted to him by the constitution, to completely destroy a water power, but never be permitted to use it?

Mr. THOMAS. No; I do not think that could possibly result, because this is a power which can be exercised only for a public beneficial purpose and ceases with nonuse.

Mr. WADSWORTH. Well, Mr. President, as I understand it, a citizen or a corporation of the State may divert water across public lands from a stream for irrigation purposes.

Mr. THOMAS. Yes; and for manufacturing purposes.

Mr. WADSWORTH. And for manufacturing purposes. He might, then, under such a provision, using the water solely for beneficial purposes, as provided in the State constitution, take all the water out of the stream above a waterfall which he never could use.

Mr. THOMAS. He could take out of the stream every drop of water to which some one else had not originally laid claim. If he took it for manufacturing purposes, however, and other citizens needed it for domestic or agricultural purposes, those rights would be superior, and they could recapture it from him if his diversion was to use it for manufacturing.

Mr. WADSWORTH. Perhaps I stated the case in an exaggerated way. Nevertheless, it would be possible, then, for a group of citizens, acting each for himself——

Mr. THOMAS. No. It would be in their corporate capacity.

Mr. WADSWORTH. In their corporate capacity, to use a sufficient amount of the water for beneficial purposes—irrigation, agriculture, manufacturing, domestic purposes, and drainage—to destroy a water power the littoral of which is owned by the Federal Government?

Mr. THOMAS. Oh, yes; the littoral of which is owned by the Federal Government. We have no riparian rights in the West. It is not compatible with civilization and settlement in an arid region. The Government of the United States, as declared by the Supreme Court in the Kansas-Colorado case, owns no title in or to the water in any of the streams out there because of its riparian ownership. It must appropriate and divert to a beneficial purpose. The change of the law which is applicable in States like that which the Senator here so well represents is due to the imperious demands of our dry climate, and to the vast and measureless importance of water in the development of the soil and the sustenance of life.

Mr. WADSWORTH. I desire to say that I am in sympathy with the general nature of the contention made by the Senator from Colorado.

Mr. THOMAS. I thank the Senator.

Mr. WADSWORTH. It occurred to me that there was an absurdity existing in the present situation with respect to the constitution of the State of Colorado.

Mr. THOMAS. Oh, if the old law of riparian rights applied, then, of course, this would be absurd, for which I am contending, except to the extent to which the rights could be exercised without doing violence to such riparian rights.

Mr. WORKS. Mr. President——

The PRESIDING OFFICER (Mr. MARTINE of New Jersey in the chair). Does the Senator from Colorado yield to the Senator from California?

Mr. THOMAS. I yield to the Senator from California.

Mr. WORKS. I just wanted to say that it must always be understood, in dealing with a question of that kind, that there is a limitation upon the amount of water that can be used by any appropriator. He can not acquire title or the right to the use of the water beyond the amount actually put to a beneficial use.

Mr. THOMAS. Nor can he speculate in it.

Mr. WORKS. Nor can he speculate upon it.

Mr. THOMAS. That is true.

Mr. WORKS. That, I think, is thoroughly well settled in our State, and I think it is in Colorado.

Mr. THOMAS. I know of no exception anywhere.

Mr. BRANDEGEE. Mr. President, will the Senator allow me to ask him a question for my own information?

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Connecticut?

Mr. THOMAS. With pleasure.

Mr. BRANDEGEE. I regret that I have not heard all of the speech of the Senator, which I know is a very able one. Under this doctrine that obtains in the arid land States of prior appropriation of water from the stream, is the beneficial use for which it can be appropriated any sort of a private business use?

Mr. THOMAS. Oh, yes.

Mr. BRANDEGEE. It does not have to be a use which is at all charged with a public interest, does it?

Mr. THOMAS. Except as the industry which that private use represents is a public one. But in a State like Colorado, if the Senator needs water for domestic purposes, and can not get it otherwise, he can condemn and secure it. He must have it for the support of himself and his family and his live stock. Consequently, this right is given for a way over the premises of others to anyone who needs the water for a beneficial use; and an absolutely necessary use, even of a strictly private nature, is so far public as to invoke the provisions of the Constitution and the laws.

Mr. BRANDEGEE. Now let me ask the Senator this question: There are certain industries that require a great deal of water. The silk industry is one, for instance. They use enormous quantities of water in the process of dyeing or coloring the goods. Under this law, would it be possible for the owner of land on a stream to use all the water in that stream for his own industry, and cut off the lower proprietors, simply because he used it first?

Mr. THOMAS. Not without making compensation.

Mr. BRANDEGEE. Oh, they always have to make compensation?

Mr. THOMAS. Yes. The superior right is a senior one or a right to take the water and devote it to the superior use, but due compensation must be made to the man who has previously acquired it for the inferior use.

Mr. BRANDEGEE. And to all others lower down on the stream, I assume?

Mr. THOMAS. Yes. Then, of course, the Senator will recognize another distinction in these uses: The use of water for domestic purposes and for agricultural purposes consumes what we call in the West the corpus, or body, of the water.

Mr. BRANDEGEE. Yes.

Mr. THOMAS. The use of it for generating power is merely the use of that strength which is developed by the current of running water, and does not consume the body of the water at all.

Mr. BRANDEGEE. No. It is the mere force of gravitation, practically.

Mr. THOMAS. Yes.

Mr. BRANDEGEE. I understand the Senator's view.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Iowa?

Mr. THOMAS. I yield to the Senator.

Mr. CUMMINS. Just to get my own mind straight in the matter, allow me to ask whether the friends of the bill claim that the State of Colorado could not condemn for a public purpose the public lands of that State?

Mr. THOMAS. Candidly, I do not know.

Mr. CUMMINS. I wondered whether it was claimed that the lands of the United States are immune or exempt from the power of a State to condemn property for a public use?

Mr. THOMAS. I must assume that those who support this bill because they think it is necessary to the development of water power in the West must at least question the power of the State to utilize its right of eminent domain in the acquisition of the sites.

Mr. MYERS rose.

Mr. THOMAS. The Senator can speak for himself, of course.

Mr. MYERS. Mr. President, speaking for myself, I will say that I know of no authority in the courts of a State to subject to the right of eminent domain the public lands of the United States. In all the discussion of this matter which I have ever heard my attention has never been called to any case where such a right has been upheld by the courts, and I do not know that it has ever been directly passed upon. I do not believe the right exists.

Mr. THOMAS. Mr. President, I intend to discuss that, and I am now about to enter upon the subject.

Mr. SHAFROTH. There was the case of Fort Dearborn, in Chicago, where an abandoned military reservation was condemned.

Mr. THOMAS. Oh, Mr. President, I have a dozen cases. A very important decision upon this subject, and I now come to the decision of the Supreme Court of the United States——

Mr. MYERS. I should like to ask a question at this point which has been suggested to my mind. If the States have a right now to subject to the right of eminent domain the public land of the United States and the States own the waters of the streams that flow within their boundaries, as is conceded by all hands in this matter, why have the States not exercised that right of eminent domain long ago and developed the water power of the West? Why is it that for the last 10 or 12 years water-power development on the public domain has been wholly arrested, if a perfect right to develop it and a way of developing it without Federal legislation already exists?

Mr. THOMAS. Mr. President, that is a very pertinent question. I confess I do not know why. I can make a conjecture.

Mr. MYERS. We are confronted with that situation.

Mr. THOMAS. I do not know why, except that the average citizen does not like to come against the power of the United States Government, partly because the extent and character of this plenary power of government in the States is not understood, because all the so-called land laws necessarily assume its nonexistence and because of acquiescence in that assumption up to this time.

Mr. SMOOT. Mr. President——

Mr. THOMAS. I yield to the Senator.

Mr. SMOOT. I will say to the Senator there is a case now before the Supreme Court of the United States, the Government of the United States against the Beaver River Power Co., in which the question involved is the right of the corporation to use the public lands within forest reserves for conveying water for power purposes under the right-of-way act of 1866. That case has been decided in the United States district court, and it was brought direct from the district court to the Supreme Court, and the case is now before the Supreme Court.

Mr. MYERS. I should like to ask why that case is before the Supreme Court of the United States if there are dozens of cases, as the Senator from Colorado says there are, already decided in favor of this right? I ask the Senator from Colorado, who has the floor, if any of the cases to which he refers are decisions of the Supreme Court of the United States?

Mr. THOMAS. Yes; the case to which my colleague referred is a decision of the Supreme Court.

Mr. MYERS. If it has been already settled by the Supreme Court of the United States, I do not see why this Utah case is pending there.

Mr. THOMAS. The courts settle nothing in these days except the instant case. Every case is now brought in review upon its merits regardless of precedents. It is one of the unfortunate things in the administration of justice here that the passage of every new law, the raising of every new interest, instead of being referred to and determined by precedents are simply the subjects of fresh litigation. If the Senator asks me why that case is before the Supreme Court of the United States, I can only answer because it was appealed there. Just how this particular question is involved in that case I am not at present able to intelligently state; but I gathered the impression in listening to the argument of it that this particular question was not one upon which the case may turn, that it is one which may but not must be passed upon. But we as lawyers are aware of the fact that the courts seldom decide a case upon a proposition not absolutely involved in and necessary to the decision itself. So I shall not be surprised when that opinion is handed down if this crucial proposition should be avoided or disregarded.

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Nebraska?

Mr. THOMAS. I yield.

Mr. NORRIS. I wish to ask the Senator a question, so that we may get his position clearly before he starts in to cite the authorities. Does the Senator contend that under the constitutional provision of the State of Colorado which he has read a citizen or a corporation of that State acting under the law of that State for the purposes mentioned in the provision of the Constitution he has read would have the right to condemn public land of the United States?

Mr. THOMAS. The question is a little broader in one sense and not as broad in another as perhaps it should be. I contend that under the provision of the Constitution, and also if that provision were not there, any corporation holding a franchise of a public utilities character to which that principle would apply has the right to condemn any land belonging to the Government of the United States within my State which is not used for a courthouse, post office, military reservation, or some other governmental agency, and that I want to demonstrate.

Mr. NORRIS. I will listen to the Senator with a great deal of interest. I should like to suggest, however, that if that is established would it not follow that the legislation now pending before the Senate would not do any material damage to any of the Western States?

Mr. THOMAS. Mr. President, that depends upon how the courts would look at it. I recall listening, a good many years ago when I was waiting in the Supreme Court across the hall for a case to be reached in which I was interested, to an argument on an appeal of a criminal case from Oklahoma. The attorney representing the plaintiff in error was making, I think, his first appearance there. He began his argument, after stating his case, by reading an extract from Blackstone. The Chief Justice said: "Mr. Johnson, will you not give the court credit for knowing a little law?" "No, your honor," he said, "that was just the mistake I made in the trial court. I do not want to repeat it here." [Laughter.] Mr. President, I do not want to make that mistake in the trial court, because some one wittily and yet truthfully, I think, said a little while ago that in these modern times anything is constitutional which Congress sees fit to enact; that is to say, the measure of our power is in these days determined by the limitation which we put upon it; and some of the decisions which have been made, I think I can say with all respect, seem to indicate the partial justice of that statement. So I shall not take any chances with the courts, either State or Federal, upon this subject whatever. Of course, if the Senate votes the other way, I will have to content myself with having done my duty.

Mr. NORRIS. Will the Senator yield to me for a moment?

Mr. THOMAS. I yield to the Senator.

Mr. NORRIS. The Senator does not contend that if the State of Colorado has the right to delegate that authority of condemnation to a corporation under the Constitution of the United States and the constitution of the State of Colorado, Congress could take it away by an act of Congress.

Mr. THOMAS. Not legally. Such things have been done, however, in the past.

Mr. NORRIS. Does not the Senator assume that the courts, even though Congress does something illegally, will not permit it to exist if properly brought to their attention?

Mr. THOMAS. I think the courts will, in the exercise of their duties, do what they think is right. Then I must remind the Senator that I am fallible; I may be mistaken in my conception of what the powers of the States are; and I am now about to discuss my view of the effect upon that power of the statute, if it should become a law and be upheld.

Mr. NORRIS. May I ask the Senator one more question to get his view?

Mr. THOMAS. I yield to the Senator.

Mr. NORRIS. If the Senator's contention is right, then it would not be necessary even to give full effect to it for Congress to pass an act turning all these power sites over to the States, but all that would be necessary would be not to legislate at all.

Mr. THOMAS. Turning them over would be easier; it would be better. I do not think the legislation is necessary. I was about to refer——

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Montana?

Mr. THOMAS. I am glad to yield to the Senator from Montana, but I wish to remind him that I want to get through as soon as I can, and I know the Senator will believe me when I tell him that I am not unduly delaying this matter.

Mr. WALSH. I know the Senator will be glad to know that there does not seem to be any foundation for his apprehension about that general reservation bill. I addressed this letter to Mr. FERRIS, chairman of the House committee:

UNITED STATES SENATE,
Washington, D. C.

Hon. SCOTT FERRIS:

Senator THOMAS has just stated that a bill has been introduced in the House, known as the Lever bill, which provides that all the lands of the United States shall be reserved from entry to be appropriated under some leasing system.

Please write me a note about this.

T. J. WALSH.

I have this answer from Mr. FERRIS:

HOUSE OF REPRESENTATIVES UNITED STATES,
COMMITTEE ON THE PUBLIC LANDS,
Washington, D. C., January 13, 1917.

MY DEAR SENATOR WALSH: We are not aware of the introduction of any such bill, but to make sure Mr. CAMPBELL slipped up to the Agricultural Committee and asked Mr. LEVER's clerk if the latter had any such bill pending. The clerk advises us that he thinks there is no such bill pending, and is of the opinion that Mr. LEVER did not introduce any such bill, and for the moment I can not imagine what Senator

THOMAS has in mind. I know of no such bill pending before the Public Lands Committee. I think there must be some mistake about it. Congressman LEVER could not be reached personally. If there is any more data you can give us, we will make an additional effort in the matter. Such a bill as that would not have a chance of passage over here anyway. On the contrary, we just enacted a 640-acre homestead bill to dispose of the public lands faster. The House would not countenance any such legislation as that mentioned by Senator THOMAS. I can not think Mr. LEVER would either.

Sincerely, yours, SCOTT FERRIS.

Mr. THOMAS. The bill to which the letter refers was passed, and it contains the reservations which I mentioned a few moments ago; that is, it required that those reservations should be inserted in the patent. I said when I referred to the Lever bill that my information came from one of my colleagues of the House. I received that information some time ago, possibly before the present session of Congress convened, but I am satisfied that the gentleman who gave it, and who was very apprehensive of its effect in the event it should be favorably considered, did not intentionally misstate the contents of it. In fact, I am sure of it, because he is the senior member of the House Committee on Public Lands, ranking next to the honorable chairman, whose letter has just been read. So I am satisfied that such a bill or something of the sort has been at some time before that committee for consideration. I will make further inquiry, and of course if my information is incorrect, or if I misapprehended it, I shall be very glad to acknowledge the fact here. It seemed to me, however, to be so naturally a sequence to this general course of modern land legislation that it did not surprise me very much to learn that something of the kind existed.

Mr. President, I shall refer as rapidly as possible to this general subject. Of course it is necessary in considering it to determine the extent of jurisdiction or sovereignty as an attribute of the General Government, because of its ownership of public domain in the Commonwealths of the Union.

The authorities upon that subject are numerous, so much so that it is somewhat difficult to determine what selection to make from them for the purpose of concretely stating the general proposition. The subject of ownership of lands and jurisdiction over them in the States by the General Government must necessarily be founded upon one of two provisions of the Constitution. Since it will not be questioned that the powers that are not delegated actually or by necessary implication are reserved to the States, we must either find it under Article I, section 8, paragraph 17, or Article IV, section 3, paragraph 2.

The first reads as follows:

The Congress shall have power

* * * * * * *

to exercise exclusive legislation in all cases whatsoever over such District (not exceeding 10 miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

That exclusive legislation is specific. It enumerates the subjects over which it is to be exercised and can not, of course, be extended by any sort of implication; it construes itself. Hence I think it must be admitted in the absence of authority to the contrary, and I know of none, that this Federal power within the States of exclusive legislation exists only in the District and over those places the title to which is secured by the Government for purposes of necessary administration, and over which the legislatures of the respective States by express enactment have surrendered jurisdiction. And unless that surrender is absolute the sovereignty of the States may still be exercised to the extent to which it does not conflict with the cession. The other proviso reads:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

Mr. President, it will be noticed that this is a power of disposition and a power of making needful rules and regulations only. But so that no question about its extent may arise it is also provided that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State." What claims? Is this confined to claims against the property or claims of jurisdiction or both? Is not this limitation designed to prevent the Federal exercise of this power of disposition and of making rules and regulations so that they shall conflict with any claim of the State, provided, of course, that claim is reconcilable or consistent with the power of disposition? The jurisdiction of sovereignty, the sovereign right of control over the public domain of the United States within the States, and because within the States, must be founded upon this proviso or it does not exist at all.

In the Kansas-Colorado case the Supreme Court said that the proviso last read had never been clearly defined, but it declined to recognize any jurisdiction or ownership in the Government of the United States because of its ownership of land to the waters thereof so as to permit it to intervene in that case. Consequently, its petition for intervention was denied.

Now, the Federal Government, as I said, is the owner of over 36 per cent of the lands in the State of Colorado, and of course it has the power to dispose of them, to make rules and regulations concerning them. It reserved that power in the enabling act under which the State was admitted to the Union, and of course the State was obliged to forego its right of taxation, which otherwise, I think, would have existed.

In other words, but for the reservation by the General Government of these lands from taxation and the recognition of that reservation, the power to tax might exist because of the fact that the land, not being a governmental agency or a governmental necessity, the United States simply owned it as any other proprietor of land was vested with title. To give the exact language of Mr. Justice Brewer in Kansas against Colorado, he said:

The full scope of this paragraph has never been definitely settled.

But the history of the paragraph may throw some light upon the subject.

Mr. Rutledge, from the committee, on August 20, 1787, recommended to the convention the following:

And to provide, as may become necessary from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the governments of individual States in matters which respect only their internal police, or for which their individual authorities may be competent.

It is clearly seen that the idea which Mr. Rutledge sought to express there was to give a power of disposition consistent with the police power of the State over the same subject.

Shortly afterwards Mr. Carroll moved to add the following proviso:

That nothing in this Constitution shall be construed to alter the claims of the United States to the Western Territory, but all such claims shall be examined into and decided upon by the Supreme Court of the United States.

These subjects were debated, and as a result Mr. Morris moved the substitution of the clause which was finally embodied in the Constitution, although the Committee on Style made some minor changes in its verbal expression.

It is evident that but for some such express power in the Constitution the territory which the Colonies had conveyed to the General Government to be sold and disposed of, first, for purposes of population and, second, to provide means for paying the national debt, that the States whose rights were then far more jealously guarded than they are in these days might frequently come into collision and engender controversies with the General Government regarding the disposition of its property, the terms of conveyance, and other differences arising in the course of time. Hence to clothe the Government with a power essential to carrying out the purposes and objects of its ownership must have been too obvious to require much controversy.

In California the Code of Civil Procedure, acting upon the lines of our own Constitution, provides that the lands "owned or held by the United States in trust or otherwise may be subject to proceedings in eminent domain."

In the case of the Desert Water, Oil & Irrigation Co. against the State, in One hundred and thirty-eighth Pacific, page 981, the supreme court of that State, incidentally considering this statute, said:

If, at the time of the proposed cession of its lands by Virginia, Congress had declared its intent to be that which it has actually executed in the State of California, little doubt can be entertained as to the answer which Virginia would have made.

In the course of the argument of the Kansas-Colorado case the Chief Justice—he was not Chief Justice then—asked the Kansas counsel this question:

You constantly talk about the public lands. When you speak of the public arid lands, are you deducing from the fact that they are public lands a governmental right or power in Congress? Do you suppose if there is a hundred acres of public land in a State the existence of that public land in the State invests Congress as a Government with the power to destroy the law of the State, because it owns land within the State, which an individual would not have?

That question, Mr. President, answers itself, and of course counsel could have answered it but one way. Yet it contained the crux of the contention, that the ownership of land by the United States practically gave it a litigating status in that case.

In Knight *v.* The United States Land Association (142 United States, 161) the Supreme Court declared that upon the acquisition of the territory from Mexico, and of course that constitutes part of my State and all of the State of the Senator from Arizona, the United States acquired the title to tidelands

equally with the title to uplands, but with respect to the former they held it only in trust for those States that might be erected out of such territory.

That brings me, Mr. President, to a consideration of the leading and original case upon this very subject, the case of Pollard's Lessee *v.* Hagan (15 United States, 391). This case has never been overruled unless it may be said to have been overruled because it may at times have been disregarded, but it is a case perhaps as frequently quoted in subsequent decisions of the Supreme and of State Courts as any of the earlier decisions.

It arose between the claimants of certain tidelands by conveyance from the State of Alabama and those claiming possession of the same lands from the Government of the United States. These lands were transferred or ceded to the Government of the United States by the State of Georgia, and were afterwards embraced within the boundaries of the State of Alabama, the contention of Alabama being that these lands, although given to the Government of the United States and never actually conveyed by it to the State of Alabama, nevertheless passed to it by virtue of its admission and through the sovereignty which inhered to it as a Commonwealth coequal with the State of Georgia and her other sister Commonwealths; and that was the view which the court sustained.

I therefore beg the indulgence of the Senate if I read sufficient of that decision into the RECORD to make it intelligible and the principle easily understood by all who care to discuss the subject.

And we now enter into its examination—

The question which I have stated—

And we now enter into its examination with a just sense of its great importance to all of the States of the Union, and particularly to the new ones. Although this is the first time we have been called upon to draw the line that separates the sovereignty and jurisdiction of the Government of the Union and the State governments over the subject in controversy, many of the principles which enter into and form the elements of the question have been settled by previous well-considered decisions of this court, to which we will have occasion to refer in the course of this investigation. * * *

We think a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory of which Alabama or any of the new States were formed, except for temporary purposes.

There are no distinctions made between the tidelands in controversy and the other public lands.

The right which belongs to the society, or to the sovereign, of disposing in case of necessity, and for the public safety, of all the wealth contained in the State, is called the eminent domain. It is evident that this right is, in certain cases, necessary to him who governs and is consequently a part of the empire, or sovereign power.

Quoting Vattel, on the Law of Nations, section 244:

This definition shows that the eminent domain, although a sovereign power, does not include all sovereign power, and this explains the sense in which it is used in this opinion. * * *

When Alabama was admitted into the Union, on an equal footing with the original States, she succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which Georgia possessed at the date of the cession, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States, for the temporary purposes provided for in the deed of cession and the legislative acts connected with it. Nothing remained to the United States, according to the terms of the agreement, but the public lands. And if an express stipulation had been inserted in the agreement granting the municipal right of sovereignty and eminent domain to the United States such stipulations would have been void and inoperative, because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain within the limits of a State or elsewhere, except in the cases in which it is expressly granted.

By the sixteenth clause of the eighth section—

And that is the provision which I have read about exclusive legislation, which I shall not stop to again quote. Then the court says:

And these are the only cases—

The only cases, mind you, under which the sixteenth clause of the eighth section conferred exclusive legislative jurisdiction—

in which all the powers of government are united in a single government, except in cases already mentioned of the temporary territorial governments, and there a local government exists. The right of Alabama and every other new State to exercise all the powers of government which belong to and may be exercised by the original States of the Union must be admitted and remain unquestioned, except so far as they are temporarily deprived of control over the public lands.

We will now inquire into the nature and extent of the right of the United States to these lands, and whether that right can in any manner affect or control the decision of the case before us. This right originated in voluntary surrenders made by several of the old States, of their waste and unappropriated lands to the United States, under a resolution of the old Congress of the 6th of September, 1780, recommending such surrender and cession, to aid in paying the public debt incurred by the War of the Revolution. The object of all the parties to these contracts of cession was to convert the land into money for the payment of the debt, and to erect new States over the territory thus ceded; and as soon as these purposes could be accomplished the power of the United States over these lands as property was to cease.

Whenever the United States shall have fully executed these trusts the municipal sovereignty of the new States will be complete throughout their respective borders, and they and the original States will be upon an equal footing in all respects whatever. We therefore think the United States holds the public lands within the new States by force of the deeds of cession, and the statutes connected with them, and not by any municipal sovereignty which it may be supposed they possessed or have reserved by compact with the new States for that particular purpose.

Language could not be plainer. Indeed, I think it is unnecessary to read further from this particular decision. As I say, it is a landmark upon the subject, one which can not be successfully refuted and one which the Supreme Court has frequently approved in subsequent cases.

Mr. SMITH of Arizona. I suggest to the Senator to put into the RECORD the succeeding lines.

Mr. THOMAS. The succeeding lines are:

The provision of the Constitution above referred to shows that no such power can be exercised by the United States within a State. Such a power is not only repugnant to the Constitution but it is inconsistent with the spirit and intention of the deeds of cession.

I thank the Senator from Arizona.

The only difference between the deeds of cession to Alabama and the treaty of Guadalupe Hidalgo and the Louisiana cession is a difference in the source of title; the situation is identical; and if the one could not confer sovereignty the other was equally powerless to confer it upon the United States with regard to the lands of the West.

The opinion in Withers against Buckley, which was delivered shortly afterwards, was in a case which arose through an attempt by the State of Mississippi to improve the watercourses within the State, and it was declared that that was a power which the State could exercise. At that time a great part of the State of Mississippi was public land, and riparian rights attached to it, whether owned by the Government or by citizens. The Supreme Court there said:

Obviously, and it may be said primarily, among the incidents of that equality is the right to make improvements in the rivers, watercourses, and highways situated within the State.

It can not be imputed to Congress that they ever designed to forbid or to withhold from the State of Mississippi the power of improving the interior of that State, * * * although a plan of improvement to be adopted might embrace or affect the course or the flow of rivers situated within the interior of the State. Could such an intention be ascribed to Congress, the right to enforce it may be confidently denied. Clearly Congress could exact of the new State the surrender of no attribute inherent in her character as a sovereign independent State, or indispensable to her equality with her sister States, necessarily implied and guaranteed by the very nature of the Federal compact.

Mr. President, I might refer to a large number of other cases which have been collated in this admirable brief, but I will not detain the Senate to do so. I wish, however, to assure the Senator having charge of the bill that he is at liberty to take this brief, if he desires to do so, either to examine the cases which are there collated or for such other purpose as he may wish.

Now, let me call attention to a later case, which arose in the State of Kansas. When Kansas was admitted into the Union, the Government reserved the reservation known as Fort Leavenworth. Upon that reservation it had erected buildings for military purposes, and, I think, also for a Federal prison; but its own act of reservation did not give the Government exclusive legislative authority over it. So the Legislature of the State of Kansas subsequently passed an act ceding the reservation to the United States. It had the following saving clause, however—

Saving further to said State the right to tax railroad, bridge, and other corporations, their franchises and property, on said reservation.

Now, mind you, the title to that property never passed out of the Government of the United States. The object of the reservation was a public and necessary one, and one which should have brought it under that provision of the Constitution giving the Government exclusive legislative jurisdiction; but its buildings did not occupy the entire tract. A railroad company held a right of way through the tract. Then the authorities of the county in which the reservation is located and of the State assumed to tax the railroad company upon its right of way. The contention, however, was made that the railroad company was exempt from taxation because the reservation was under the exclusive legislative control and jurisdiction of the Government of the United States. The Supreme Court refuted that contention, and at page 526 of the decision Mr. Justice Field, speaking for the court, said:

The land constituting the reservation was part of the territory acquired in 1803 by a cession from France, and until the formation of the State of Kansas and her admission into the Union the United States possessed the rights of a proprietor and had political dominion and sovereignty over it.

Just as it has to-day in Alaska and as it possesses here in the District of Columbia.

For many years before that admission, it had been reserved from sale by the proper authorities of the United States for military purposes, and kept by them as a military post. The jurisdiction of the United States over it during this time was necessarily paramount.

But in 1861 Kansas was admitted into the Union upon an equal footing with the original States—that is, with the same rights of political dominion and sovereignty, subject like them only to the Constitution of the United States. Congress might undoubtedly, upon such admission, have stipulated for retention of the political authority, dominion, and legislative power of the United States over the reservation, so long as it should be used for military purposes by the Government—that is, it could have excepted the place from the jurisdiction of the State of Kansas, as one needed for the uses of the General Government. But from some cause, inadvertence perhaps, or overconfidence that a recession of such jurisdiction could be had whenever desired, no such stipulation or exception was made. The United States therefore retained, after the admission of the State, only the rights of an ordinary proprietor; except as an instrument for the execution of the powers of the General Government, that part of the tract which was actually used for a fort or military post was beyond such control of the State by taxation or otherwise, as would defeat its use for those purposes. So far as the land constituting the reservation was not used for military purposes, the possession of the United States was only that of an individual proprietor. The State could have exercised, with reference to it, the same authority and jurisdiction which she could have exercised over similar property held by private parties. This defect in the jurisdiction of the United States was called to the attention of the Government in 1872.

The court then quotes a number of authorities.

"These authorities are sufficient to support the proposition which follows naturally from the language of the Constitution, that no other legislative power than that of Congress can be exercised over land within a State purchased by the United States with her consent for one of the purposes designated; and that such consent under the Constitution operates to exclude all other legislative authority.

"But with reference to lands owned by the United States, acquired by purchase without the consent of the State, or by cession from other governments, the case is different. * * *

Where, therefore, lands are acquired in any other way by the United States within the limits of a State than by purchase with her consent, they will hold the lands subject to this qualification: That if upon them forts, arsenals, or other public buildings are erected, for the uses of the General Government, such buildings, with their appurtenances as instrumentalities for the execution of its powers, will be free from any such jurisdiction and interference of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the General Government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. But, when not used as such instrumentalities, the legislative power of the State over the places acquired will be as full and complete as over any other places within her limits.

As already stated, the land constituting the Fort Leavenworth Military Reservation was not purchased, but was owned by the United States by cession from France many years before Kansas became a State.

Mr. SMITH of Arizona. From what case is the Senator quoting?

Mr. THOMAS. This is the case of the Fort Leavenworth Railroad Co. *v.* Lowe (114 U. S., 525).

It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex not inconsistent with the free and effective use of the fort as a military post.

The comparatively recent case of Ward *v.* Race Horse (163 U. S., 504) in line with this decision is also illuminating. Prior to the admission of the State of Wyoming the Government had entered into a treaty with a certain tribe of Indians then occupying a part of the territory afterwards included within that State which gave the Indians the right to hunt upon the public domain. After the State was admitted, it enacted a law for the preservation of its game. This tribe of Indians disregarded the law, and continued to exercise what it claimed to be its hunting rights and privileges on the public domain under the treaty to which I have referred. That brought them into collision with the State authorities, and their defense was that the game law had no force and effect upon the public lands of the United States within Wyoming covered by the treaty; that the admission of the State into the Union in no wise impaired their rights, except as it might apply to lands then in private ownership. This case is a most interesting one, as will be seen from this outline. It went to the Supreme Court of the United States, where the contention of the State authorities was unanimously upheld. The court said, among other things:

* * * If the treaty applies to the unoccupied land of the United States in the State of Wyoming, that State would be bereft of such power—

That is the power of a sovereign State—

since every isolated piece of land belonging to the United States, as a private owner, so long as it continued to be unoccupied land, would be exempt [from its laws] * * *. Nor need we stop to consider the argument advanced at bar that, as the United States * * * has the right to deal with that subject, therefore it has the power to exempt from the operation of the State game laws each particular piece of land owned by it in private ownership within the State.

Here is a treaty—a part of the supreme law of the land—with an Indian tribe, conferring valuable rights over lands afterwards coming within the jurisdiction of a State, sponged out by the automatic operation of the sovereignty attaching to a State upon its admission into the sisterhood.

In a case entitled Canfield against United States, in One hundred and sixty-seventh United States, page 524, the court characterizes the Government's ownership of land within the State as a proprietary ownership; and in Kansas against Colorado, Two hundred and sixth United States, page 46, the Supreme Court, in upholding the power of the State to provide for the acquisition, tenure, conveyance, and abandonment of the right to the use of the waters of the natural streams, said:

As to those lands within the limits of the States, at least of the Western States, the National Government is the most considerable owner, and has power to dispose of and make all needful rules and regulations respecting its property. We do not mean that this legislation can override the State laws with reference to the general subject of reclamation. While arid lands are to be found mainly, if not only, in the western and newer States, yet the powers of the National Government within the limits of those States are the same (no greater and no less) than those within the limits of the original thirteen, and it would be strange if, in the absence of the grant of definite power, the National Government could enter the territory of the States along the Atlantic and legislate in respect to improving by irrigation or otherwise the lands within their borders. Nor do we understand that hitherto Congress has acted in disregard to this limitation * * *.

But it is useless to pursue the inquiry further in this direction. It is enough for the purposes of this case that each State has full jurisdiction over the lands within its borders, including the beds of streams and other waters * * *. It may determine for itself whether the common-law rule in respect to riparian rights or that doctrine which obtains in the arid regions of the West of the appropriation of waters for the purposes of irrigation shall control.

Congress can enforce neither rule upon any State, and yet, if the Government, because of its proprietorship of lands within Colorado, has the supreme and undisputed power of control and disposition of it entirely freed from the State's power of eminent domain, it can enforce the doctrine of riparian rights as to all such land; or, if you please, it can adopt the other. In either event it acts upon its own power and superior to the State. Yet the Supreme Court of the United States very properly recognizes that such an exercise of power would necessarily be a diminution of the sovereign power of the State where the land is situated, and would, therefore, reduce that power below the same power in other States where there is no public domain. Their sovereignty would at once become unequal and their equilibrium impaired.

Now, bearing upon this proposition are citations of a great many other cases, but I think I have said enough, Mr. President, to demonstrate the proposition, especially as there is no authority to the contrary, that the United States in its ownership of the public domain, none of which is used for Government essentials and agencies, is the proprietor of that land, and as such proprietor its property is within the jurisdiction of the State and subject to the sovereignty and the laws of the State.

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER (Mr. MARTINE of New Jersey in the chair). Does the Senator from Colorado yield to the Senator from Nebraska?

Mr. THOMAS. I yield.

Mr. NORRIS. Let me ask the Senator if, in his judgment, then, it would follow that, with the exceptions noted, the State might even tax land owned by the Government of the United States?

Mr. THOMAS. That is one of the exceptions. I think that but for the exception the State could tax such land, just as it did in the Leavenworth case, although there are decisions to the contrary.

Mr. NORRIS. Well, in the Leavenworth case it did not undertake to tax the land of the Government but the property of a railroad company.

Mr. THOMAS. I am aware of the fact that in the Leavenworth case the tax was levied upon the property and franchises of a railroad company. That is very true; but, Mr. President, the theory which forbids one sovereignty to tax the property of another relates and is confined to that property which is essential to the accomplishment of governmental purposes, and not to lands simply owned as proprietor and which are not at the time of the exercise of the taxing power needed or used for governmental purposes. Of course that is my opinion. I simply draw that conclusion from my familiarity with the principles upon which the case of McCulloch against Maryland and others recognizing and enforcing the distinction are founded.

Now I come to the question whether the State has this power of eminent domain to the extent that it can exercise it against property belonging to the Government of the United States, and just here let me digress for a moment for the purpose of ascertaining what that power is. In the Cyclopedia of Law and Procedure "eminent domain" is said to be:

A right inherent in all sovereignties, and therefore would exist without any constitutional recognition, and its exercise by the Government does not involve the commission of a tort.

That is to say, it is a right so essential and so generally recognized that the agency clothed with it is free from wrong in its exercise.

The right of eminent domain antedates constitutions, which are only declaratory of previously existing universal law, and is not conferred but limited by them. The right can only be denied or restricted by fundamental law, and is "a right inherent in society." The power to take private property for the common welfare is generally held to remain dormant in the State until the terms and conditions upon which it is to be exercised have been prescribed by appropriate legislation.

I read from page 564 of the same volume, the volume being No. 15:

The United States Government has the right of eminent domain in territory acquired by the United States either by conquest or purchase. The right of eminent domain may be exercised by the United States within the several States, so far as is necessary to the enjoyment of the powers conferred upon the United States by the Constitution.

And it is sufficient to say that the United States can exercise this power for no other purposes. In that respect it is substantially different from, certainly more restricted than, the power of the States.

I read an extract from page 602:

All kinds of property of whatever description are subject to the exercise of the power of eminent domain.

We discover, therefore, Mr. President, that this is a plenary power; one which is not conferred upon a State government by its organic law. Constitutions may limit it as to States, while they confer it upon a Government like the United States, all whose powers are delegated. In my State there is no restriction so far as public land is concerned. The express recognition of the right through the recitals of the State constitution merely emphasizes its existence.

Something was said by one of the Senators during the discussion about the Federal act of 1866. That is a very brief law, which recites, in terms, that all patents issued by the Government shall be subject to rights of way for the transmission of water upon the public domain; that is to say, if my friend, the Senator from Nebraska [Mr. NORRIS], has a flume or a ditch across a piece of public land which I subsequently file upon and homestead or stake a mining claim upon, the patent to me would except his right of way from the operation of the grant.

Mr. President, the Supreme Court in many cases—I have not time to refer to any of them specifically—in upholding that law, declared that it created no right whatever; it conferred no right whatever; it merely acknowledged the existence of rights acquired by citizens of the local community or State. They could acquire them only by going upon the public domain and utilizing, by actual possession, so much of the land as was necessary to the enjoyment of the right. It is therefore, I think, a pertinent fact in this discussion that so important a statute as this, which has been upon the statute books now for nearly 51 years, instead of creating, recognized a right previously existing.

I will refer to one more case relating to this matter of proprietorship, because it is a recent one. It is the case of McGilvray against Ross, reported in Two hundred and fifteenth United States, page 70, which involved the ownership of a navigable lake in the State of Washington, the contention of the State being that the title passed to it, eo ipso, upon its admission into the Union; the claim, of course, being challenged. No deed from the United States to the State was ever executed.

Mr. Justice Van Devanter, speaking for the Supreme Court of the United States, said upon this subject:

It was settled long ago by this court, upon a consideration of the relative rights and powers of the Federal and State governments under the Constitution, that lands underlying navigable waters within the several States belong to the respective States in virtue of their sovereignty, and may be used and disposed of as they may direct, subject always to the rights of the public in such waters and to the paramount power of Congress to control their navigation so far as may be necessary for the regulation of commerce among the States and with foreign nations, and that each new State, upon its admission to the Union, becomes endowed with the same rights and powers in this regard as the older ones.

I have in mind in this connection a number of cases cited by the Senator from California [Mr. WORKS] in his minority report—two of them, I think, from the Supreme Court of the United States—which sustain the proposition that the State has absolute control over the waters of a river entirely within its boundaries. There are many streams of that sort in my State—tributaries, it is true, of others—but nearly all rivers are tributaries.

Now, why should the proprietary right of the Federal Government yield to the sovereignty of the State of Washington in that particular case, and not yield to the equally essential duty of Colorado to provide for the general welfare, and the power to take property for public use whenever it is necessary for the public interest?

I have here a number of additional cases which answer that question in the affirmative, among which is Woodruff against North Broomfield in Eighteenth Federal, 772. That case attracted great attention at the time of its pendency, and involved the right of the owners of placer claims to wash the gravel and débris of their land into the Sacramento River, which carried it down and deposited it upon the alluvial lands below. In that case this great question was involved and decided favorably to my contention by Judge Sawyer, one of the earliest and most eminent of the Federal circuit judges on the Pacific coast.

This doctrine has been applied, Mr. President, not in the rights of way for water so much as in the acquisition of lands for other purposes. Of course, the principle is identical. The leading case, because it is the first case upon the subject, is United States against Railroad Bridge Co., in Sixth McLean, 517, decided in 1855, in the circuit court of the United States; and, if I recall, for the northern district of Illinois. There the court had under consideration the right of a railroad company to construct a bridge across the Mississippi River at Rock Island for the Rock Island Railroad. Rock Island had been a military reservation, as it is now. It was abandoned then, but the use has been restored. It was not subject to sale. This is the first time the question was directly presented to the courts, so far as I know. I have endeavored to ascertain if the decision of Justice McLean was ever overruled, and I am prepared to say that it never has been. He said:

Whether a State has power, by an act of incorporation or otherwise, to authorize a rail or turnpike road through the lands of the United States has not, it is believed, been raised or judicially decided. The first impression would be, probably, that the State can not exercise such a power. But first impressions are rarely to be followed on constitutional questions. * * * Within the limits of a State Congress can, in regard to the disposition of the public lands and their protection, make all needful rules and regulations, but beyond this it can exercise no other acts of sovereignty, which it may not exercise in common over the lands of individuals. A mode is provided for the cession of jurisdiction when the Federal Government purchase a site for a military post, a customhouse, and other public buildings, and if this mode be not pursued, the jurisdiction of the State over the grounds purchased remains the same as before purchase.

Now, that is an important fact, although the court then said:

This, I admit, is not a decided point, but I think the conclusion is maintainable by the deductions from constitutional law, * * * and in the discharge of the ordinary functions of sovereignty a State has a right to provide for intercourse between the citizens, commercial and otherwise, in every part of the State by the establishment of easements, whether they may be common roads, turnpike, plank, or railroads. The kind of easement must depend upon the discretion of the legislature, and this power extends as well over the lands owned by the United States as to those owned by individuals. This power, it is believed, has been exercised by all of the States in which the public lands have been situated.

Not, perhaps, in such a way as to provoke controversy demanding judicial decision, but evidently to such an extent that the judge here seems to have taken judicial notice of it.

I continue the reading:

It is a power which belongs to the State, and the exercise of which is essential to the prosperity and advancement of the country. State and county roads have been established and constructed over the public lands in a State under the laws of the State without any doubt of its power and with the acquiescence of the Federal Government. In this respect the lands of the public have been treated and appropriated by the State as the lands of individuals. * * *

It is difficult to perceive upon what principle the mere ownership of the land by the General Government within a State should prohibit the exercise of the sovereign power of the State in so important a matter as the easements named. In no point of view are these improvements prejudicial to the general interest. On the contrary, they greatly promote it. They encourage population and increase the value of the land. In no respect is the exercise of this power by the State inconsistent with the fair construction of the constitutional power of Congress over the public lands. It does not interfere with the disposition of the public lands, and instead of lessening enhances their value.

Where lands are reserved or held by the General Government for specified and national purposes it may be admitted that a State can not construct an easement which shall, in any degree, affect such purposes injuriously. No one can question the right of the Federal Government to select the sites for its forts, arsenals, and other public buildings. The right claimed for the State has no reference to lands specially appropriated, but to those held as general proprietor by the General Government whether surveyed or not. The right of eminent domain appertains to the State sovereignty, and its exercise is free from the restraints of the Federal Constitution. The property of individuals is subject to this right, and no reason is perceived why the aggregate property in the State of the individuals of the Union should not also be subject to it. * * * Whether we look to principle, or the structure of the Federal and State governments, or the uniform practice of the new States, there would seem to be no doubt that the State has the power to construct a public road through the public lands. A grant to this effect is sometimes made by Congress, as in the act of 1852; but this does not show the necessity of such a grant. Generally, Congress appropriates to the road a large amount of lands. The positions are supposed to be irrefragible—first, that the right of eminent domain is in the State; and, secondly, that the exercise of this right by a State is nowhere inhibited, expressly or impliedly, in the Federal Constitution, or in the powers over the public lands by that instrument in Congress.

That is so plain that he who runs may read; and, as I have said, it has never been questioned judicially, so far as I know.

Now, let me suggest a condition that might arise if that were not true. Suppose that the Government should withdraw per-

manently all these power sites and announce its purpose to be to keep them perpetually withdrawn from any form of use. By so doing it could deprive the State and its people of the benefit and enjoyment of their property in the force generated by the flow of the waters of the natural streams. If the United States can withdraw them it can make the withdrawal absolute.

Mr. STERLING. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from South Dakota?

Mr. THOMAS. I will yield in just a moment. Thus it could not only deprive the people of the State from the enjoyment of that property right, which would for all practical purposes be destroyed, but it could very seriously interfere with the development of the State by paralyzing the development of this power. Will it be said, because the Government as a proprietor of land can so determine, that the State, for the well-being of its people, for the protection and development of the State, for establishing intercourse between its various parts, for the attraction of population, for the increasing of its taxable wealth, for all those purposes and others for which the public utility is in these days such an essential of civilization and of growth, can not utilize its plenary power of eminent domain over the public lands? If it can not its usefulness as a Commonwealth is gone.

I now yield to the Senator from South Dakota.

Mr. STERLING. The Senator from Colorado has cited, I think, the decision of the Circuit Court of the United States for the Northern District of Illinois, if I remember correctly, which seemed to lay down very strongly the principle that the State had the right of eminent domain, and that that right extended to the public lands. So far as I can gather from the Senator's remarks in that connection and from the decision, the exercise of this right has been by acquiescence on the part of the General Government, either through an act of Congress or in some other way. I should like to ask the Senator if he knows of any case where there has been a proceeding on the part of a State in the exercise of the right of eminent domain as it affects Government land, a proceeding to condemn, for example, and take the land or property of the Federal Government for the purposes of the State or a municipality of the State?

Mr. THOMAS. Mr. President, of course, the Senator is aware of the fundamental distinction between a substantial right and a remedial right, and that I shall discuss before I leave the floor. Answering his question directly, I know of no instance in which such a proceeding has preceded the possession of the State or its agency. I know of a number of instances in which proceedings have followed the taking of possession. I do not, however, believe that the right is at all dependent upon or should be regulated by any question of the remedy through which it may be made applicable. That is another branch of the discussion, and I will reach it after a while.

Mr. BRANDEGEE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Connecticut?

Mr. THOMAS. I yield; yes.

Mr. BRANDEGEE. The Senator would not claim that a State could condemn part of a navy yard or other Government property?

Mr. THOMAS. I have made that distinction clear. Not by any means.

Mr. SHAFROTH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to his colleague?

Mr. THOMAS. I do.

Mr. SHAFROTH. I should like to ask the Senator whether the absence of decisions concerning eminent domain exercised by the State as against the property of the National Government does not arise from the fact that no laws are in existence giving to an individual or a company the right to sue its sovereign, the United States?

Mr. THOMAS. Partly, perhaps, but not entirely.

Mr. SHAFROTH. What would be the process in obtaining jurisdiction of the United States?

Mr. THOMAS. I prefer to answer that question when I get to that branch of the subject.

Mr. SHAFROTH. All right, if the Senator is going to cover it.

Mr. THOMAS. Mr. President, I will answer in part the query of my colleague by saying that the national legislation with regard to rights of way for railroads, canals, and so forth, was, up to the beginning of the century, so liberal and so much more easy of compliance than to invoke the power of eminent domain that they have been acquired in that way. For example, we have a general law giving right of way to railroad companies over all the public domain, passed, I think, in 1871—somewhere along there. Rights of way over the public domain for the transmission of water for all lawful purposes were recognized by the act of 1866 and were easy of acquisition over the public domain through the operation of the consent given by the Government, doubtless because of its recognition, in large degree, of the power of the State to emphasize the right through condemnation.

In Union Pacific Railroad Co. *v.* Burlington & Missouri Railroad Co. (3 Fed., 106), which involved an attempt by the Burlington to condemn a right of way across the Union Pacific right of way, it was contended that the latter company was a governmental agency, created and endowed with a right of way to subserve a great national purpose, which in a large sense was true; and it therefore invoked a public ownership of the right of way of the Union Pacific in the Government as coming under the exclusive legislative jurisdiction of the Congress under the article of the Constitution which I read yesterday. The case was tried before Circuit Judge McCrary, at one time Secretary of War and for many years upon the circuit bench in the eighth circuit. The judge said:

> Should a case of conflict between the State and Federal Government arise, the paramount authority of the United States under the Constitution would, of course, prevail. Thus, if the United States has, by proper proceedings, condemned and taken land for a fort, arsenal, * * * or lighthouse, * * * it would not be in the power of the State, in the exercise of its right of eminent domain, to take the same property. But the present case does not come within this principle. The United States has never condemned the right of way of the Union Pacific Railway, and taken it for its own use for public purposes, within the meaning of the rule just stated. * * * I am clearly of the opinion that the right of way of the Union Pacific Railway is not property of the Federal Government set apart for its own public use, so as to exempt it from the operation of the law of the State of Nebraska, above quoted, respecting the crossing and connecting of railroads, and the condemnation of the property for those purposes.

Here is the important part of the decision:

> If, however, it were conceded to be land of the United States, unless held for governmental purposes, it would, even in that case, be subject to the State's power of eminent domain. Land owned by the United States, as a mere proprietor, and not used for any of the purposes of the National Government, may be taken by the State for public use.

The Illinois Central Railroad Co. against C., B. & M. R. Co.——

Mr. STERLING. Mr. President, before the Senator passes to that, may I call his attention to another matter in this connection?

The PRESIDING OFFICER. Does the Senator from Colorado further yield to the Senator from South Dakota?

Mr. THOMAS. Yes.

Mr. STERLING. I am referring to the case cited in the views of the minority on this bill—the case of Woodruff against North Broomfield Gravel Mining Co., in Eighteenth Federal.

Mr. THOMAS. I referred to the case myself a moment ago.

Mr. STERLING. Yes; and to this particular language from the decision, as cited in the views of the minority:

> Thenceforth the only interest of the United States in the public lands was that of a proprietor, like that of any other proprietor, except that the State, under the express terms upon which it was admitted, could pass no laws to interfere with their primary disposal, and they were not subject to taxation. In all other respects the United States stood upon the same footing as private owners of land.

I wanted to ask the Senator if that primary disposal was not the disposal referred to in the constitutional provision which gives the Congress the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States?

Mr. THOMAS. I have endeavored to so argue *all* the afternoon.

Mr. STERLING. I have not had the pleasure of hearing the Senator's argument in great part.

Mr. THOMAS. The distinction which I make, and which the authorities make, is that this clause gives the power of primary disposition to the Government, but does not invest it with sovereignty over the land in the States. There is no question but that under this provision Congress may make all rules and regulations necessary for the disposition, not for the retention, of the land; and if the Senator will refer back to the case of Pollard's Lessee against Hagan, which I read into the RECORD a while ago, he will find a full and unanswerable statement of the effect of this constitutional provision, its meaning, and its limitations.

Mr. BRANDEGEE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Connecticut?

Mr. THOMAS. I yield; yes.

Mr. BRANDEGEE. Has the Senator in his remarks previously instanced the case of a forest reservation or of a national park?

Mr. THOMAS. I have not. I have instanced no cases except those where the land is used as provided in another section of the Constitution.

Mr. BRANDEGEE. I was simply going to ask the Senator, then, if he would not regard the establishment by the Nation of a national park as a governmental function; and if so, whether the State could exercise its right of eminent domain against the national park or the forest reservation?

Mr. THOMAS. Of course, a national park is a sort of governmental institution, much more so for the purposes of this discussion than a forestry reservation, both, however, being reservations for public purposes. But I entertain little doubt that if it were necessary in the construction of a railroad to build it through some section of a national park the power of the State to authorize it is clearly existent. I have no doubt about its power to do so through a forestry reservation.

Mr. BRANDEGEE. Would the Senator think that the State could delegate its power of eminent domain to a corporation, for the purpose of supplying water to a town, for instance, to condemn a lake in a national park?

Mr. THOMAS. I think so. It might be that a city near the borders of a national park springing up through the unexpected discovery of large bodies of minerals, or from some other cause, might find itself absolutely dependent for a water supply upon a lake within the boundaries of a national park.

Mr. BRANDEGEE. I concede the desirability of it in that case.

Mr. THOMAS. Under such circumstances, which are among those giving rise to the exercise of this plenary power, I should hesitate to admit that it could not be exercised for the benefit of the community.

Now, I will refer rapidly to a number of other cases on this subject.

There is the case of Illinois Central Co. *v.* C. B. & M. R. Co. (26 Fed. Rep.), decided by Judge Gresham, whom Senators will remember as Secretary of State under Mr. Cleveland. He said:

> Lands owned by the United States within a State and not held for a public purpose are subject to the State right of eminent domain and taxation, the same as lands owned and held by individuals. It is only such land as the United States owns and holds within the States and upon which it maintains public buildings, arsenals, forts, etc., that are exempt from State authority and taxation.

I have called attention to the exemption from taxation of public lands by the States in the enabling acts and constitutions of the States more recently admitted to the Union.

Mr. MYERS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Montana?

Mr. THOMAS. I do.

Mr. MYERS. I want to ask a question for enlightenment. I have not been able to remain in the Chamber all the time the Senator was reading from the brief.

Mr. THOMAS. I congratulate the Senator.

Mr. MYERS. No; I am the subject of commiseration, not congratulation. I have remained all the time I could. I was very much interested, but I have been called out a number of times.

In these cases where the Senator claims that the right of eminent domain has been exercised in regard to lands of the United States, has the United States Government been made a defendant? Has the United States Government been sued? If so, how did they get around the general principle that you can not sue the United States Government without its consent?

Mr. THOMAS. I must also ask the indulgence of the Senator, as I have asked that of my colleague. I will reach that subject before I yield the floor.

Mr. MYERS. I would be glad to hear the Senator on that point.

Mr. WALSH. Mr. President, before the Senator from Colorado proceeds, if he will pardon me, I sent to the desk this morning a clipping showing the activity of the people of Italy in the development of the water powers of that country. I now send to the desk and ask to have read an editorial from the morning paper showing similar activity by the Republic of France.

The PRESIDENT pro tempore. Without objection, the Secretary will read as requested.

The Secretary read as follows:

[Editorial from the Washington Post of Monday, Jan. 15, 1917.]

FRENCH WATER POWER.

In sharp contrast to the nonaction of the United States Government, France is now spending millions of dollars to develop the water power of the Alps, the Pyrenees, and the central mountainous regions.

It was the war that acted as an incentive to France in developing water power for the operation of mills manufacturing shells, chemicals, and other necessities for the army.

In the valley of Durance new plants, aggregating 74,000 horsepower, for the electrochemical industry are under way, while above Modane one of the biggest chemical works in France has acquired rights to about 120,000 horsepower of waterfall that will be utilized speedily. Electric energy for Paris brought from the Alps is the most ambitious project for the future. A dam 75 yards high in the Rhone at Genissiat, backing the water up 14 miles to the Swiss frontier, will furnish a fall sufficient to operate a power station of 325,000 horsepower and 240,000 kilowatts. The line of transmission will be 312 miles long. It is estimated that this enterprise alone will economize 1,800,000 tons of the 20,000,000 tons of coal France imported annually before the war.

President Wilson once remarked that the "we-will-and-we-won't policy" had been delaying progress in the United States. That this delay is apt to become a serious handicap is shown by the manner in which European nations are encouraging the development of their water power. The fear that some one will make some money out of development in the United States should no longer retard progress. The coal bill and the farmers' fertilizer bill can not be cut down except by the extensive development of the vast water power that is now going to waste in this country.

Mr. WALSH. Mr. President, if the Senator from Colorado will pardon me further, I want to call attention to the statement in this editorial to the effect that the French are constructing a dam 75 yards high, which will back water for 14 miles, thus producing an enormous power plant to supply the city of Paris. On the boundary line between the States of Wyoming and Montana is the Big Horn Canyon. A dam practically that high—75 yards, 225 feet high—will back water for 50 miles between the practically perpendicular walls of a canyon; so that there is not an acre of land, practically, that will be flooded by the erection of that dam.

I ask the Senate to contemplate for a moment what enormous power a development of that character signifies. A dam 225 feet high, no higher than the one that is being built in the Alps, yet backs the water four times as far, making a reservoir, a lake of enormous extent, and yet it can be constructed without any particular damage to adjacent lands.

Mr. THOMAS. Mr. President, there can be no question about the practical value of the subject matter of this bill nor about the usefulness of such a project as that to which the Senator from Montana has just referred. If efficiency and necessary construction were here involved as elements which could not be otherwise secured, I should not feel at liberty to oppose this bill; but inasmuch as I am satisfied that the same results can be obtained otherwise and in a manner which involves no sacrifice of the rights and powers of the States or affect the general policy of the Government—a salutary policy of disposition by proceedings entirely at variance with the details of this bill—I am not impressed that this exhibition of fact is at all pertinent to the discussion. If I thought so, I would at once, then, inquire whether, stupendous as such improvements are and useful as they must become, we should acquire them at the sacrifice of an ancient policy on the one hand and the integrity of the States upon the other.

There can be no question about the efficiency of all forms of German enterprise, which are exhibited not alone in its military strength and preparation but in its entire economic structure; and yet I am satisfied that the Senator would hardly be willing to adopt and put into operation a similar system of efficiency at the price of that autocracy for which Germany is also notorious.

Now, Mr. President, I want to digress from my discussion for a moment to refer to an episode between the Senator from Montana and myself concerning the so-called Lever bill which I mentioned, I think, on last Friday. The Senate will recall that the Senator from Montana took issue with me as to the existence of such a bill and afterwards read into the RECORD a letter from the chairman of the House Committee on Public Lands asserting that no such measure had been introduced or was pending in the House. I have here a letter from Mr. EDWARD T. TAYLOR, of the House, who is the ranking member of the committee, and which was written after his attention was called to the letter of the chairman of the committee and to my statement concerning the Lever bill. It is addressed to me, and reads as follows:

HOUSE OF REPRESENTATIVES UNITED STATES,
Washington, D. C., January 15, 1917.

Hon. CHARLES S. THOMAS,
United States Senate, Washington, D. C.

MY DEAR SENATOR: Concerning the colloquy between yourself and Senator WALSH regarding the public-land leasing measures, there was a misunderstanding as to the time rather than the substance of the question.

In the second session of the Sixty-second Congress Congressman LEVER, of South Carolina, introduced H. R. 19857, providing for the withdrawal from entry of all the unreserved, unappropriated public lands of the United States and authorizing the President to establish grazing districts over the public domain and regulate the use of it for grazing purposes; to issue permits of 10 years each at a charge of not less than one-half cent and not more than 4 cents per acre for the use

of the public domain. That bill was known as the "Lever bill," and was very vigorously denounced throughout the public-land States as, in effect, wiping out all public-land laws and effectually terminating homesteads. That bill is still being denounced in the West as the "Lever" bill. However, Mr. LEVER did not reintroduce it in the Sixty-third Congress, but it was reintroduced in the Sixty-third Congress by Congressman KENT, of California, as H. R. 10539, and the Public Lands Committee on March 3, 1914, entered upon and conducted an exhaustive hearing on that bill, together with bill H. R. 9582, by Mr. Ferguson, of New Mexico, which was the 640-acre homestead bill.

The American National Live Stock Association vigorously supported the Kent bill, as it had done the Lever bill, and all the large stock interests of the country and big sheep men vigorously supported both of these general public-land withdrawal and leasing bills. Those hearings extended over several days and covered 504 pages. The Kent bill appears in full at page 23 of the hearings, a copy of which I am sending you herewith. So that in the Sixty-third Congress the Lever bill was known as the Kent bill.

In the Sixty-fourth Congress neither Mr. LEVER nor Mr. KENT reintroduced this bill, but the same object is sought to be obtained in slightly different language by the bill H. R. 336, introduced at the last session by Mr. STEPHENS of Texas, a copy of which I inclose herewith. You will note it provides that "the public grazing lands in the arid States and Territories shall be leased by the Commissioner of the General Land Office under the provisions of this act." It is, in my judgment, purely a large stockmen's public-land withdrawal and grazing leasehold proposition, which would effectively put the western 17 States into a Federal cow pasture and is fully as inimicable to the development of the West as the Lever-Kent bill. This propaganda was started by Mr. Pinchot some 10 or 12 years ago, through Senator Burkett's bill and others, and is now being referred to as the Lever-Kent-Stephens bill. My understanding is that all of the ultraconservationists are supporting the American National Live Stock Association in its advocacy of this measure and in its vigorous opposition to the 640-acre homestead law.

The Lever-Kent bill was emphatically repudiated by the Public Lands Committee of the House in both the Sixty-second and Sixty-third Congresses, and the committee has not and will not during this Sixty-fourth Congress give any consideration to the Stephens bill, because it is unalterably opposed to the wholesale withdrawal from entry of the public domain for leasing or any other purpose.

Yours, very cordially,

EDWARD T. TAYLOR.

My error was one of time, Mr. President. I confounded the statement of the writer of the letter just read with bills introduced and pending in the present instead of the last and a previous Congress.

The hearings to which the letter refers are represented by this large volume which I hold, entitled "Hearings before the Committee on Public Lands on House bill 9582 and House bill 10539."

Mr. WALSH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Colorado yield to the Senator from Montana?

Mr. THOMAS. I yield.

Mr. WALSH. I recall the Lever bill very well indeed. It had its origin a number of years before the Sixty-third Congress. In fact in the month of February, 1907, before I became a Member of the Senate or got into public life at all, I took a trip from Montana to Washington and appeared before the Committee on Agriculture of the United States Senate and opposed just exactly such a measure as that, and I have never wavered in my opposition to it. I maintain exactly the same opposition to it to-day that I did then. That bill embodied no such idea as the Senator expressed, namely, a desire and disposition to withdraw all public lands from entry with a view to disposing of them under a leasing system. The Lever bill provided for the classification of the public lands and the leasing of them for grazing purposes, but it expressly provided that they should all be subject to homestead entry under the then existing law, so that a man could take a homestead and when he got it he would have a complete title to it.

Our objection to it was that if you did that you would prevent anybody from going upon these lands because the cattlemen have a lease of the land, and therefore the homesteader would be hampered and hindered from exercising his homestead right. The Senator and I are in perfect accord about that, but I should hardly think the Senator would feel it was a bill which supported the idea which he is presenting here, that we would be likely to adopt permanently a system which would make everybody a tenant of the Government.

Mr. THOMAS. Mr. President, the bill which was introduced in the House in the Sixty-third Congress is composed of eight sections. The first opens with this recital:

That the unreserved, unappropriated public lands of the United States shall be subject to the provisions of this act, and the President of the United States is hereby authorized to establish from time to time, by proclamation, grazing districts upon the unreserved, unappropriated public lands of the United States, conforming to State and county lines so far as practicable, whereupon the Secretary of Agriculture, under rules and regulations prescribed by him, shall execute, or cause to be executed, the provisions of this act, appoint all officers necessary for the administration and protection of such grazing districts, regulate their use for grazing purposes, protect them from depredations, from injury to the natural forage crop, and from erosion.

It is true that subsequent sections recognize homestead rights, but it is equally true that under their provisions it would be extremely easy for the Secretary of Agriculture to substitute his department for that of the Land Department, and then determine what should and what should not constitute grazing tracts for lease, since the bill subjects all unreserved and unappropriated public lands to its provisions. The departments having administration over these laws frequently surround or accompany them by rules, some of which, not intentionally, are either so restrictive or so much an enlargement of the law which is to be administered as to practically injure, if not defeat, the purpose and intention of the measure.

So far as I am concerned, I am very glad to learn from the Senator that he is not committed to but, on the contrary, will vigorously oppose any and all such legislation. I wish he could go further and agree with me that it is to the interest of the people whom we represent to oppose all these various schemes of legislation, since they have running through them all a family likeness, a tendency to withhold fee-simple title at least to the remaining public domain and reserve it, or something supposed to be in it, in the Government, giving to the citizens not the right to acquire the title but the right to the use of the lands under terms and regulations to be prescribed by the various bureaus and departments.

Mr. President, the first action of the general assembly of my State, now in session, which convened on the first Wednesday in January, was to pass a joint resolution of protest against the proposal of the Forestry Bureau to increase the rates for grazing upon the lands contained within these reservations.

Mr. SMOOT. Doubling them.

Mr. THOMAS. It is proposed to double them, Mr. President, and thus increase by 100 per cent the cost of maintaining the flocks and herds of the West upon the pastures found in these reservations.

Mr. SHAFROTH. Mr. President——

The PRESIDING OFFICER (Mr. THOMPSON in the chair). Does the Senator from Colorado yield to his colleague?

Mr. THOMAS. I yield.

Mr. SHAFROTH. I will state to the Senator, if he will permit me, that it is not the first increase that has been made. They have been making increases ever since the forest policy was adopted.

Mr. WADSWORTH. Mr. President——

Mr. THOMAS. I am obliged to the Senator for his information. I yield to the Senator from New York.

Mr. WADSWORTH. Can the Senator indicate the rates charged by the Government on these grazing leases?

Mr. THOMAS. I must refer the Senator to the Senator from Utah [Mr. SMOOT] and to my colleague for a reply to that question. I can not give the rates.

Mr. CLARK. They vary on different reservations.

Mr. WADSWORTH. According to the influence?

Mr. CLARK. I do not know how that is.

Mr. SMOOT. I will say to the Senator that the average, I believe, is 35 cents per head of cattle for the few months that they graze upon the forest reserves; the rate on sheep is 7 and 8 cents, and there are some reservations where the rate is even higher than that. Now, they propose to double those rates.

Mr. WEEKS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Massachusetts?

Mr. THOMAS. I yield.

Mr. WEEKS. What I wish to ask is whether or not these rates are higher or lower than those which are charged by the owners of grazing lands.

Mr. THOMAS. I yield to the Senator from Utah to answer that question.

Mr. BORAH. The difference between the private owner and the Government is that the private owner pays a tax. If the Government were paying taxes in our State we would not object to this system at all.

Mr. WEEKS. I am willing to take that into consideration, but I should like to have an answer to the question.

Mr. SMOOT. I will say that there are some public lands leased through the Reclamation Service for the grazing of cattle and sheep where the price paid is higher, the rates being fixed by the bid of those who desire the grazing of the lands. There are other cases, and I admit it frankly, where the leasing rates are higher than the rates that have been charged in the past by the Forest Service upon national forest reserves.

Mr. WEEKS. Would the Senator think the difference between the rate charged by the Government and the rate charged by the individual, less whatever suitable taxes would be paid if the land were in the hands of individuals, would be a fair rate for the Government to charge? I am asking the question for information, not because of any prejudice about the bill or what the bill contemplates doing.

Mr. SMOOT. Mr. President, the policy in establishing forest reserves and charging for grazing privileges thereon was to charge only enough for grazing privileges to help pay the administrative charges of the forest reserve, the greater part of which would be paid from the sale of timber upon the reserve. The idea was not to impose an unjust burden upon the people of the Western States using the reserves. The use of the public lands in the other States was granted without cost to the people. The object of the reservation was to protect the watersheds and the timber of the reserves and not make a profit out of the grazing privileges granted to the stockmen who live in that part of our country.

Mr. WEEKS. I hope the Senator from Colorado will pardon me for breaking in in this way, but I wish to ask him, if the Government is going to follow this system of leasing lands or of renting grazing privileges, does he think it is unreasonable that the Government should charge a fair commercial rate for the privilege?

Mr. SMOOT. Yes; I think it is unreasonable, because it is withholding the land from entry; and in the other public-land States the citizens had a perfect right to enter those lands, in which case the State could tax the land, and the taxation go toward maintaining the institutions of the State.

Mr. WEEKS. What I referred to was as long as the renting is done. I think the lands ought to be entered and in the hands of private individuals as far as possible; but, as long as the Government rents the land, is there any reason why it should not receive a fair commercial return for doing so?

Mr. SMOOT. I will say to the Senator——

Mr. SHAFROTH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield further; and if so, to whom?

Mr. THOMAS. I yield to my colleague.

Mr. SHAFROTH. I wish to suggest to the Senator that we have nothing in the way of renting land in the hands of private people similar to that by which the various reservations are rented. Whenever the State has a large quantity of land, and rents it, the average price that it rents it for is 5 cents an acre a year; it is by the acre instead of the head; and in some cases, where there is running water through the section, it is rented at 8 cents an acre; but there is nothing done by the State in the way of leasing by the head. Where there are leases that way, it is of a cultivated field, such as an alfalfa field, and, of course, that is a higher character of feed, and, consequently, they would naturally require a larger price from the owner of the cattle.

Mr. WEEKS. Let me ask the Senator from Colorado, who knows a great deal about this question, if he thinks the rates charged by the Government for grazing privileges, based on a commercial standard, are high?

Mr. SHAFROTH. I do not know. If you are going to count the land as worth so much and charge interest upon it, and if you take the value of the land and the number of people who are employed, and try to make it a paying institution, of course, it will not pay and never will pay, because the overhead charges are so enormous. There is no doubt about that. On that account it is very hard to determine what would be a fair return on the value of the land.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Idaho?

Mr. THOMAS. I yield.

Mr. BORAH. We would lose sight of the real controversy so far as the West is concerned if we should stop to discuss whether the grazing privilege is worth 30 cents a head or 35 cents a head. The point is that it prevents the development of the State upon that basis which is necessary to make a new Commonwealth and build a State. We have 83 per cent of our State reserved and entirely free from tax-paying burdens.

Mr. WEEKS. May I ask the Senator from Idaho why it makes any difference about the development of this property and getting it into the hands of private individuals whether the rate charged is 35 cents or 70 cents?

Mr. BORAH. The Senator from Massachusetts misunderstood my suggestion entirely if he supposes his question is pertinent to what I said. It does not make any difference; that is precisely what I say, but the proposition with us is to prevent the leasing system as an entirety. We do not want it at all at any price. If it was 2 cents a head, we would be opposed to it.

Mr. WEEKS. I understood the objection that was being made was that there was an increase in the charges to be made by the Government.

Mr. THOMAS. I was not objecting; at least my purpose was not to object so much as to illustrate. Personally I can see no reason why, if the Government is to retain these enormous reserves in their present condition, it should not obtain some revenue by contracts with the owners of sheep and cattle whereby their grazing facilities can be utilized. My reference to the subject was a digression at the best. I called the attention of the Senate to it because of the controversy between the Senator from Montana and myself and the reference to the object and purposes of the Lever bill. But I may say for the edification of the Senator from Massachusetts and others who are interested in this matter that the establishment of reserves carrying with it the power to charge these rates carries with it also the power to make them prohibitive; and all these different changes, whether they be large or small, whether they be just or unjust, serve to increase that irritation which necessarily arises when two sovereignties come in conflict over the same subject matter and at the same time.

There is doubtless a good reason, at least in the opinion of the forest authorities, for this enhancement of the charges. But, it has its bearing upon the very important subject of the cost of living, which is becoming the most potent and insistent of all questions just at this time. It would seem therefore to be unfortunate that the Government should now, when prices for all the necessities of life are so high, propose to double its rates for pasturage in the forest reserves.

Of course, as stated by the Senator from Idaho, the fundamental attitude of men like himself and myself excludes these details of administration. We object to the reservation of large areas of land, which seems to us unnecessary, and particularly because such reservations necessarily contract the area of possible population very considerably, and, of course, the area of land which may become subject to the taxing power of the Commonwealth. I imagine that if in the State of Massachusetts the Government of the United States owned and had withdrawn from settlement even 10 per cent—to say nothing of the 80 per cent in the State of Idaho—even 10 per cent of its domain, from which the tides of population were practically excluded, which could not be absorbed, so to speak, in the common mass of property of the community, the Senator from Massachusetts would be less concerned about charges for the use of that land than he would be about the fact of withdrawal and its effect upon the prosperity and future of the State.

But, Mr. President, I have unintentionally gone far away from the argument I was attempting to present when the Senate adjourned on last Saturday evening. I was then reading authorities upon the proposition that the ownership of land by the Government of the United States within the limits of a State, not needed and used for governmental purposes, was not an ownership which in any wise affected the sovereign dominion of the State over that land; that it was just as much subject to the police laws, to the criminal laws, to the laws for the protection of property by the State, that it was just as much subject to the power of condemnation as were the lands of any private citizen; and I had reached, when the Senate adjourned, and was about to refer to the case of the Pacific Railway Co. against Leavenworth, in Twenty-ninth Federal Reporter, page 728, and to its decision by Mr. Justice Brewer, who was then upon the circuit bench. It was a case somewhat similar to the Union Pacific-Burlington case. Mr. Justice Brewer first cited with approval the Railroad Bridge case, of Judge McLean. Then he said:

> Even if it were conceded that Congress had the power to enter the territory of a State and, for any purpose, establish a line through its center over which the State had no right of crossing—a sort of Chinese wall dividing the State into two portions, inaccessible to each other, a concession I should never be willing to make—it is clear to my mind that no assertion of such a power was ever contemplated by Congress in the Pacific Railroad legislation.

The application of this doctrine to the principle of the pending bill lies in the fact that in that litigation the Union Pacific Railway Co. was resisting the right of condemnation over and across its right of way upon the ground that it was a great governmental agency, that the Government of the United States had created the corporation and had endowed it with an immense land grant and right of way 400 feet in width in order that it might be an agency, an indispensable attribute in the exercise of national administration. The proposition was rejected. It was said by Justice Brewer that, even if it were true, a proposition which he would not concede, it is clear that no such assertion of any such power was ever contemplated in the creation of the Union Pacific Railroad.

Mr. President, the other day my colleague [Mr. SHAFROTH] mentioned the case of the United States against the City of Chicago, which is found reported in Seventh Howard, page 185, and in which the city attempted to condemn streets for public use through Fort Dearborn Reservation. Of course, the Members of the Senate remember distinctly that the city of Chicago com-

prises an old reservation, called Fort Dearborn, in its business center; but at that early time the fort was the chief part of the community, and the city needing certain rights of way across the reservation proceeded to open them. The case came to the Supreme Court of the United States, where Mr. Justice Woodbury, in delivering the unanimous opinion of the court, as I recall, said:

It is not questioned that land within a State, purchased by the United States as a mere proprietor and not reserved or appropriated to any special purpose, may be liable to condemnation for streets or highways like the land of other proprietors under the rights of eminent domain.

I have called attention, so far, Mr. President, to Federal authorities, to cases in the inferior and the supreme courts of the Nation. I have given careful consideration to the subject, and have verified the brief from which I have read, and have also endeavored to discover authorities which disputed the general proposition. I have not been able to do so, unless it can be said that some recent cases—the case of the United States against Light, for example—may not be consistent with this general line of authorities. I do not think that is so, but that is the only possible conflict which I have been able to discover to this well-recognized and fundamental proposition; but the question has been before the State courts—eminent State courts—as well. It was before the Supreme Court of Minnesota at an early period in the life of that great Commonwealth in the case of Camp against Smith, Second Minnesota, page 131. The court said:

The United States has but a proprietary interest in the public lands within the several States; the sovereignty is in the State. The rights attaching to the interest do not differ from those of any other landholder in the State, except as provided by the Constitution of the United States and the terms of the contract between the general and State governments at the time the State is admitted into the Union. The Constitution merely asserts the right to dispose of, as proprietor, and to make needful rules and regulations necessary to the exercise of that right.

In State against Bachelder, Fifth Minnesota, page 178; in Simonson against Thompson, Twenty-fifth Minnesota, page 450, the proposition was reaffirmed, and the last case was decided upon the doctrine of the United States against The Railroad Bridge Co., in Sixth McLean, from which I read a long extract on Saturday.

In Burt against Mechanics' Insurance Co., One hundred and sixth Massachusetts, the supreme court of that State said:

The United States, acting through Congress, has the right to eminent domain in all purposes incidental to the exercise of the powers conferred by the Constitution, and such as exist by necessary implication, and none others: and so, on the other hand, the State, as to other purposes, has the same right even to the extent of taking public lands of the United States as was decided in United States *v.* Railroad Bridge Co.

California has spoken upon the same proposition. In the case of Moore *v.* Smaw (17 Cal., 199) the court, speaking by Chief Justice Field, afterwards Associate Justice of the Supreme Court of the United States, one of the most eminent men who ever occupied that exalted position, said:

The United States occupy, with reference to their real property within the limits of a state, only the position of a private proprietor, with the exception of exemption from State taxation, and their patent of such property is subject to the same general rules of construction which apply to conveyances of individuals.

The same court, in the case of People *v.* Shearer (30 Cal., 645), said:

The relation of the United States to the public lands since the admission of California into the Union is simply proprietary—that of an owner of the lands, like any citizen who owns lands, and not that of municipal sovereignty.

That doctrine, Mr. President, is also recognized by the text writers upon the subject. I will quote from merely one of them——

Mr. CURTIS. Mr. President——

Mr. THOMAS. In just a moment I will yield to the Senator. Lewis, on Eminent Domain, third edition, volume 2—this is a late edition of a standard work upon the subject—says:

The public lands of the United States, situated within a State and held for sale or settlement, are subject to the eminent domain of the State.

Now I yield.

Mr. CURTIS. I desire to know the date of the California case, if the Senator has it.

Mr. THOMAS. I am unable, from this brief, Mr. President, to give the Senator that information.

Mr. CURTIS. If Justice Field rendered that opinion, it must have been a long while ago.

I desire to ask the Senator if that decision has been followed in the more recent decisions?

Mr. THOMAS. If the Senator had been present on Saturday afternoon he would have heard me cite a large number of cases from the courts of the United States. I will say to the Senator that I have been unable to find a single instance in which the doctrine has been denied either in the State or the Federal courts.

Mr. BRANDEGEE. Mr. President, will it interrupt the Senator for me to ask him a question there?

Mr. THOMAS. Not at all.

Mr. BRANDEGEE. Does the court distinguish between the right of a State to tax the property, from which they say the property is exempt, and the right of a State to impose eminent domain upon it, to which they say it is subject? They are both attributes of sovereignty, are they not?

Mr. THOMAS. They are both attributes of sovereignty; but in the enabling acts, under whose provisions these States were admitted, Congress required as a condition of admission that the State should yield its power of taxation on the public domain, and in the constitutions of the several States or in their schedules there is this express reservation.

I will say to the Senator the very fact that the Federal Government required this exemption to be made, and that the State makes it, would seem to be an argument in favor of my contention, because, if it were not so, the States could probably tax all lands held by the Government of the United States as proprietors not actually used for governmental purposes.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Montana?

Mr. THOMAS. I yield.

Mr. WALSH. Is it not a fact, let me ask the Senator from Colorado, that the Supreme Court of the United States has held that the lands of the United States are not taxable by the States, utterly regardless of the compact entered into on the admission of the State into the Union?

Mr. THOMAS. I think, Mr. President, that the Supreme Court of the United States has so determined.

Mr. WALSH. It has so determined repeatedly.

Mr. THOMAS. Mr. President, while the announcement of the Supreme Court is the law, I affirm that the decision is contrary to the fundamental principles of taxation and of exemptions therefrom, as outlined in McCullough against Maryland and subsequent cases. It is not, to my mind, in conformity with the principle of absolute sovereignty which every State possesses, except as restricted by the specific limitations which are placed upon it by its own constitution or the Constitution of the United States.

Mr. WALSH. Mr. President, if the Senator from Colorado will pardon me, I will say, for the information of the Senate, that when the bill for the admission of California into the Union was under consideration in this body, it contained such a provision as the Senator speaks of, under which the State of California undertook that it would never tax lands of the United States within the State of California; and Mr. Webster called the attention of the Senate to the fact that a provision of that kind was utterly unnecessary in the bill, because the Supreme Court of the United States had already decided that the lands of the United States could not be taxed by the States.

Mr. THOMAS. Mr. President, since that colloquy, however, a number of courts have held to the contrary, and I have just read some of the opinions to that effect. Moreover, I again remind the Senator of the express surrender of the power which Congress requires every State to make upon its admission to the Union.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Idaho?

Mr. THOMAS. I yield.

Mr. BORAH. Mr. President, the leading case holding that the lands of the Government are taxable regardless of the exemption is the Tennessee case, in which the Government through the process of foreclosure or some other medium—I have forgotten just what—received back a piece of land and it became the property of the Government.

Mr. SHAFROTH. It was through a tax sale.

Mr. BORAH. Through a tax sale; that is right. The Supreme Court of the United States held that the land was not taxable regardless of the question of whether or not it had been exempted; but I am like the Senator from Colorado [Mr. THOMAS] in that I have never seen the reason or philosophy of that holding.

Mr. WALSH. Is that the case of Van Brocklin against Tennessee?

Mr. BORAH. That is the Tennessee case.

Mr. WORKS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from California?

Mr. THOMAS. I yield.

Mr. WORKS. I am not familiar with the cases to which our attention has been called, but it will be remembered that the original States voluntarily ceded all of their lands to the United States Government for the purpose of paying the debts of the Government, upon the condition that those lands were not to be taxed, and it has been uniformly held that the new States that are admitted into the Union are admitted on the same terms. It may be that the decision was placed upon that ground, rather than upon any express reservation.

Mr. BORAH. No; the Supreme Court in the Tennessee case goes to the full length in reference to that property and holds that being the property of the United States, it is not taxable.

Mr. WORKS. As I have said, I have no recollection of ever examining that case, but I suggest that might be the reason for it.

Mr. THOMAS. Mr. President, such is my recollection of the decision, but I am unable at this time to detail the reasoning of the court. I believe, however, that these decisions are entirely in harmony with the proposition for which I am contending—that the right of condemnation exists and must exist if the autonomy of the State as a coequal with the sisterhood of Commonwealths is to be maintained, since otherwise the United States, as the greatest of all landed proprietors in a great many of the States, would have the power absolutely to withhold from any sort of settlement or development, if it so chose, every acre of such land, and not only arrest the growth and development of the State, but practically put it out of existence through the consequent lack of facilities and agencies for conducting the government and exercising its functions, for taking care of its citizens, furnishing means of communication, and enforcing the laws of the Commonwealth.

One of these decisions speaks of the necessity of intercommunication between the different parts of the State. Now, will it be said, if the Government should forbid the building of a highway of any sort between the 44 per cent of the State owned by citizens in private ownership and the 56 per cent in public ownership, that the State would not have eo ipso the plenary authority, which is inseparable from sovereignty, to condemn rights of way through these lands for its roads so essential not only to the welfare but to the very existence of community life? It would seem that the mere statement of the proposition carries with it its own answer.

I stated, Mr. President, on Saturday that the rights of way which the early pioneers of California, of Idaho, of Oregon, of Colorado, and of the other Western States had taken and developed for the purposes of their business and community life were an application of this principle by the people, not perhaps in their collective capacity as a State or a Territory, an exercise of that right which necessity or convenience or development demands. The act of 1866—I think our first mining law—provided, in substance, that all conveyances by the Government should be made with reservations of these rights of way. It is applicable as well to patents for mines as to patents for homesteads, and in one of the first cases in which that section was involved, the case of Brodie *v.* Water Co.—there were earlier cases than that—but in the case of Brodie *v.* Water Co. (101 U. S., 274), which was a case brought on error to the Supreme Court of the United States from the Supreme Court of California, the court said, speaking of these rights of way:

> They are rights which the Government had by its conduct recognized and encouraged and was bound to protect before the passage of the act of 1866. We are of opinion that this section of the act which we have quoted was rather a voluntary recognition of a preexisting right of possession constituting a valid claim to its continued use than the establishment of a new one.

The act, in other words, did not create these rights. They were there. They were recognized as such, and consequently the exemptions were provided for.

While I am on this subject, Mr. President, I recall that in 1908 or 1909 a client of mine who had acquired a right of way across the public domain under the act of 1866 for a flume and canal for the development of hydroelectric power—a vested right recognized by the then existing laws both of the State and of the Nation—was notified by the Forestry Bureau to apply for and take out a permit for the use of that portion of his right of way which was within the boundaries of a subsequently created forest reserve. Upon consultation with the firm, of which I was then a member, this gentleman decided to ignore the notice. He then received a second one, calling his attention to the first, and insisting upon his compliance within a given period. Upon advice, he allowed that period to lapse. He was then notified that unless he applied for and received the permit, proceedings in ouster would be instituted against him. It was then that his counsel became active, and informed the bureau of the conditions which I have just recited, and of the further fact that no permit would be taken out under any circumstances for what we believed to be an absolute, vested property right. There is no need of following up the details. Suffice it to say that the Government authorities did not see fit to press the matter any further, and it was abandoned; but I was told in that connection of instances where the same demand had been made and complied with by the owners of similar rights of way as an alternative to the disagreeable prospect of controversy with the Federal Government.

Now, let me again refer to the case of Withers *v.* Buckley—a case with which my friend from Mississippi [Mr. WILLIAMS] is doubtless familiar, since it arose in his State under an attempt on the part of the State government to develop certain watercourses within the State, and which was challenged upon the ground that the public domain through which these watercourses ran, being the property of the United States, was without the power of the State of Mississsippi to interfere with or to take any action about. The court said:

> It can not be imputed to Congress that they ever designed to forbid, or to withhold from the State of Mississippi, the power of improving the interior of that State, * * * although a plan of improvement to be adopted might embrace or affect the course or the flow of rivers situated within the interior of the State. Could such an intention be ascribed to Congress, the right to enforce it may be confidently denied. Clearly, Congress could exact of the new State the surrender of no attribute inherent in her character as a sovereign independent State, or indispensable to her equality with her sister States, necessarily implied and guaranteed by the very nature of the Federal compact. Obviously, and it may be said primarily, among the incidents of that equality is the right to make improvements in the rivers, water courses, and highways situated within the State.

The case of West River Bridge Co. *v.* Dix (6 How., p. 529), decided about the same time, announced that—

> It can not be justly disputed that in every political sovereign community there inheres necessarily the right and the duty of guarding its own existence, and of protecting and promoting the interests and welfare of the community at large. This power and this duty are to be exerted not only in the highest acts of sovereignty, and in the external relations of governments; they reach and comprehend likewise the interior polity and relations of social life, which should be regulated with reference to the advantage of the whole society. This power, denominated the eminent domain of the State, is, as its name imports, paramount to all private rights vested under the government, and these last are, by necessary implication, held in subordination to this power and must yield in every instance to its proper exercise.
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> The Constitution of the United States, although adopted by the sovereign States of this Union, and proclaimed in its own language to be the supreme law for their government, can, by no rational interpretation, be brought to conflict with this attribute in the States; there is no express delegation of it by the Constitution; and it would imply an incredible fatuity in the States to ascribe to them the intention to relinquish the power of self-government and self-preservation.

I think that is the strongest expression upon the subject to be found from the Supreme Court of the United States; and yet it is by no means too strong, because the plenary power of disposition of all property within the limits of a Commonwealth—excepting, of course, those limitations which are imposed by the Constitution, which are very few and very specific, and those imposed by its own constitution—is so much an essential to its existence that it would be worse than fatuous to propose for a moment to surrender it. Indeed, as stated in one of the decisions which I read on Saturday, if the Federal Government made it a condition to the admission of a State that it should surrender even a part of its sovereign power of eminent domain, the requirement would be absolutely void.

Mr. President, it is said—and I have encountered this statement on more than one occasion as an argument against this proposition—that the requirement by the Government, upon the admission of the State of Colorado, that it should recognize and not interfere with the Government's sole power of disposition and control of the public domain within its borders carried with it a surrender of all plenary power over such property; and attention is always called to the recitals of the enabling act and of the Constitution upon this subject. I have already endeavored to show that the provision of the Constitution of the United States giving to Congress the power of disposal of its property is not a basis for the claim of sovereignty over it. In other words, it confers merely a power of disposition, not a power of absolute political domination. It is not a power of political domination in any sense, and, as a consequence, it is merely an exemption of control by the State so far as relates to the power of disposition and proprietary control over that part of its domain the title to which still remains in the Government.

That contention, supported as it is by the authorities which I have read, is perfectly consistent with the assertion of the sovereign power of eminent domain over these lands. As a citizen of Colorado I have the sole power of disposition of my property. The Senator from Nebraska [Mr. NORRIS] has in Nebraska the sole power of disposition over his property. The Government of the United States in both these States has similar power of disposition over its property.

The fact that the constitution expressly gives that authority does not enlarge and transform it from a power of disposal to a power of sovereignty, and when we remember that that clause of the constitution which confers this power of disposition declares that it shall not in anywise interfere "with any claim of the State or of the United States" we must conclude that it was designed, by virtue of the imposition of that condition, to emphasize my contention and to limit its operation to the power of disposition. If it were otherwise, then the provision of our constitution recognizing a right of way over public lands for the disposition of waters and their use would be nugatory. It would be in conflict with the Constitution of the United States. But the Congress accepted that constitution. The President of the United States ratified it in his proclamation declaring our State admitted into the Union. It has been recognized by the practice of the people with regard to rights of way over the public domain. The supreme court of the State has emphasized it as an inherent essential sovereign power. The Federal courts have never anywhere questioned or challenged its accuracy.

So I say that the enabling act and the constitution of Colorado are reconcilable each with the other, and both with this provision of the constitution, if we carry in our minds the distinction between the proprietary, primary right of disposition and the right of eminent domain over the same lands. The assurance of the proprietary right of disposition was demanded by the United States in the enabling act. The right of eminent domain over the public lands was expressly asserted by the State of Colorado in its constitution, and there is no inconsistency between them. The executive department of the Federal Government acquiesced in the distinction when it proclaimed the admission of the State into the Union.

The most recent State case upon this subject to which my attention has been directed, where it was fully considered, is a case from Wyoming entitled Farm Investment Co. *v.* Carpenter (61 Pac., 258). The court there states the form in which the question was raised:

> It is strenuously insisted that the declaration contained in the Constitution that the waters of the natural streams, etc., are the property of the State is meaningless and of no force and effect. It is argued that the State no more than an individual can acquire property by a mere assertion of ownership, and that the United States, as the primary owner of the soil, is also primarily possessed of the title to the waters of the streams flowing across the public lands. This contention demands more than a passing notice.

I shall not take time, Mr. President, to read the long extract from that opinion in the brief which I hold in my hands, but I shall ask leave to insert it in the RECORD at this point as a part of my remarks, being pages 127 and 128 of this document.

The PRESIDING OFFICER. Without objection, it will be so ordered.

The matter referred to is as follows:

> So far as any proprietary rights of the United States are concerned, the question would seem to be settled in favor of the effectiveness of the declaration by the act of admission, which embraces the following provision: "and that the constitution which the people of Wyoming have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed * * *." At the modern common law public waters are generally confined to those which are navigable, and public rights therein to navigation and fishery and privileges incident thereto. In the arid region of this country another public use has been recognized by custom and laws and sanctioned by the courts—a public use sufficient to support the exercise of the power of eminent domain. (Irrigation District *v.* Bradley, 164 U. S., 112.) This use and the doctrine supporting it are founded upon the necessities growing out of natural conditions and are absolutely essential to the development of the material resources of the country. * * * The common-law doctrine of riparian rights relating to the use of the water of natural streams and other natural bodies of water not prevailing, but the opposite thereof, and one inconsistent therewith, having been affirmed and asserted by custom, laws and decisions of courts, and the rule adopted permitting the acquisition of rights by appropriation, the waters affected thereby become, perforce, publici juris. It is therefore doubtful whether an express constitutional or statutory declaration is required in the first place to render them public.
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> In a country where the doctrine of prior appropriation has at all times been recognized and maintained an expression by constitution or statute that the waters subject to appropriation are public, or the property of the public, would seem rather to declare and confirm a principle already existing than to announce a new one. But, however this may be, we entertain no doubt of the power of the people in their organic law, when existing vested rights are not unconstitutionally interfered with, to declare the waters of all natural streams and other natural bodies of water to be the property of the public or of the State. Nor do we doubt that the legislature may make a like declaration, when in that particular unrestrained by the constitution. * * * If, as has been said, the title of the General Government to the public lands is that of proprietor rather than sovereign (Kin. Irr., sec. 145), it would seem that its rights as such are not greater to the waters of the streams flowing across the lands than those of an individual owner.

Mr. THOMAS. Mr. President, the question was asked on Saturday—and it was a very pertinent one—if it be true that the State may exercise its power of eminent domain over the lands of the United States within its borders the title to which is in the Government of the United States, how can it put that right into effective operation? I think the Senator from South Dakota [Mr. STERLING] asked me if I could refer him to a single case in which this right was asserted in the courts against the United States; and the question was asked by the Senator having charge of the bill [Mr. MYERS] whether I could cite him to a single case in which the United States appeared as a defendant. I told him that I could not, but that I preferred to discuss the proposition later on.

It is known, of course, by everyone, and certainly by the legal profession, that rights are fundamentally of two kinds. There are substantial rights and there are remedial rights. It may be true that the remedial right is in some instances essential to the enjoyment of the substantial right; but they are as fundamentally distinct and separate as the night from the day. If I am in possession of a substantial right, the fact can in no manner be influenced by the question whether or not there goes with it a remedial right. If it is my right, then, even though I may not be able to enforce it in certain directions, even though the laws of my country do not prescribe a specific method of procedure for its recognition, it is a fundamental right, substantial in its character, and from which I can not be deprived under the Constitution of my country.

If I own a bond issued by the Government of the United States I have a right to demand upon maturity the amount of its principal, and between the time I acquire it and its maturity every interest payment as it matures, but I have no remedial right that I know of through which I can enforce this demand if the Government should for any reason fail to meet its obligation. Will anyone say that because that is a fact my property right in that Government bond is not absolute, that it is not mine, that I have not a right to insist that it shall not be taxed, that I may not dispose of it and depend upon the Government, independently of any question of remedy, for its recognition and allowance?

I think this one illustration is enough to satisfy the Senate that the existence of the right must be considered as distinct from the question of remedy. If it is a right, however, it certainly should be one which can be exercised without doubt. I question whether the general proposition that the Federal Government can not be sued without its consent, or that a State can not be sued without its consent, in the event the Government of the United States should want to condemn State lands for its specific purposes, would be entirely applicable. It is true that proceedings in condemnation are controversies, Mr. President, which admit of appeal and upon which error can be assigned, but, as a matter of fact, proceedings for the enforcement of condemnation do not constitute "actions at law."

In the Cyclopedia of Law and Procedure, volume 15, page 805, it is said that—

> Condemnation proceedings are no more than a compulsory sale of all the owner's interest in the property sought to be appropriated. Under most of the statutes such proceedings are essentially proceedings in rem, although the methods by which the power of eminent domain is to be exercised vary according to circumstances and according to the provisions of the different State legislatures. The proceeding is not one according to the course of the common law, but is a special proceeding, and it is not one to determine titles, unless this is allowed by the statute, but to fix the compensation and assess the damages. It is distinct in character from proceedings by which money is raised by taxation to make compensation for the land taken.

It is a proceeding, as here stated, in rem, a proceeding in which the object sought is to acquire property by ascertaining and then paying its value, because it can not be taken without compensation.

Of course, notice must be given of some sort to the owner of the premises and those who claim to be owners. A jury trial can not be demanded as a matter of right unless the statute so provides. In my State provision is made in some instances for a jury, in others for a commission of appraisers. The court may appoint a commission consisting of three members, if you please, or five, as the statute may be, and these inquire into and determine and assess the amount, which, when paid into court, gives the right to possession.

In my State upon the filing of a petition, if it is made to appear to the court that the petitioner needs immediate possession, he is given it upon paying a certain amount in court fixed by the judge as being the probable value. If after the end of the proceeding there is an appeal, that does not operate to deprive the petitioner of the possession of the premises pending the appeal, for the whole question is one of compensation, not the ascertainment of title, not ejectment. The title can not be in dispute at all or controverted unless the local statute makes such provision.

The act of the General Assembly of Colorado upon this subject was passed in 1915. I shall not take the time to read it, but I shall ask permission to insert it at the end of my remarks. It has reference to taking over the public domain. It provides

for the filing of a petition for the purpose of determining compensation and the fixing of a time for a hearing upon it, publication of a notice in some newspaper of general circulation in the State once a week for six weeks prior to the time set for hearing, and in the event the property belongs to the United States the service of a copy of the notice and petition upon the legal representative of the Government within the State. Then follow the details, which are common, I think, to practically all acts regarding condemnation.

Mr. President, my first answer to the proposition propounded by the Senator from South Dakota is that in Colorado the legislature has, by affirmative action, sought to give the State and through the State the corporation entitled to rights of way a method of acquiring them by proceedings in the courts; and of course upon the theory that, being a proceeding in rem, the ownership of the property, because it happens to be in the Government instead of the individual, can not oust the court from jurisdiction.

In the cases of Denver & Rio Grande Company *v.* Wilson (28 Colo., 6) and Edwards *v.* Roberts (144 Pac., 856), that being a Colorado case also, the principle of the United States *v.* Bridge Company (6 McLean, 517), was recognized, and an application for injunction restraining the possession which had been acquired in those cases from continuance was denied.

I have no doubt, Mr. President, that after complying with the laws of the State regarding appropriations and the location of necessary reservoir sites and rights of way, the representatives of the right may, as has always been done in the West, enter upon the public domain and begin the work of construction. When the Government seeks to interfere the condemnor can defend his possession by pleading that he is there under the State's power of eminent domain and ask for the assessments of damages by way of compensation.

There are a number of authorities upon that proposition. Roberts *v.* Northern Pacific Railroad Co. (158 U. S., 1) was a bill by the Northern Pacific Railroad to quiet title to certain lands. Roberts became purchaser of a tract of land long after the railroad company had entered into possession of it and constructed its road. The Supreme Court of the United States, in passing upon this proposition, said:

> It is well settled that where a railroad company, having the power of eminent domain, has entered into actual possession of land necessary for its corporate purposes, whether with or without the consent of the owner of such lands, a subsequent vendee of the latter takes the land subject to the burden of the railroad and the right to payment from the railroad company, if it entered by virtue of an agreement to pay, or to damages, if the entry was unauthorized, belongs to the owner at the time the railroad company took possession.
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> So, too, it has been frequently held that if a landowner, knowing that a railroad company has entered upon his land and is engaged in constructing its road without having complied with the statute, requiring either payment by agreement or proceedings to condemn, remains inactive and permits them to go on and expend large sums in the work, he will be estopped from maintaining either trespass or ejectment for the entry, and will be regarded as having acquiesced therein and be restricted to a suit for damages.

There is another case in which the Northern Pacific Co. was a party which was decided by the Supreme Court also. It is the case of Northern Pacific Railroad Co. *v.* Smith (171 U. S., 260), the proceedings being somewhat similar to that of the first case mentioned. There the court held:

> There is abundant authority for the proposition that, while no man can be deprived of his property, even in the exercise of the right of eminent domain, unless he is compensated therefor, yet that the property holder, if cognizant of the facts, may, by permitting a railroad company, without objection, to take possession of land, construct its track, and operate its road, preclude himself from a remedy by an action of ejectment. His remedy must be sought either in a suit of equity or in a proceeding under the statute, if one be provided, regulating the appropriating of private property for railroad purposes.

Perhaps the strongest case upon this immediate subject is that of New York City against Pine, in One hundred and eighty-fifth United States, page 93:

> That was a suit by riparian owners to restrain the city of New York from completing a dam which would divert water from the plaintiff's land. The city had been building the dam for two years prior to the filing of plaintiff's bill and had spent large sums of money.
>
> At the beginning of his opinion, Mr. Justice Brewer assumes that the city of New York could not have condemned the right to appropriate this water, and that if this suit had been brought prior to the beginning of work on the dam an injunction would have been granted, and after reviewing the cases, where the courts under certain circumstances have refused to interfere with the possession of railroads, he says:
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> "It is, however urged that in all the cases referred to the one party could have appropriated the property or right of the other by condemnation proceedings, and that as he could have done so he should not be disturbed for lack of those proceedings, but either given time to carry them through or else in the pending equitable suit have the compensation or damages estimated, and then, upon payment, be protected in his possession. In other words, as he could have obtained the rightful possession by legal proceedings and payment, equity will do what the law could have done, and on payment of the ascertained compensation or damages affirm the possession. Whatever may be true of these cases, we start in this with the assumption that there was no power in the city of New York, by any proceedings in the States of New York or Connecticut, to acquire the right of appropriating this water and thus depriving the plaintiffs of its continued flow."

Nevertheless in that case, Mr. President, the Supreme Court referred the owner of the property to his right of compensation. I do not know of a more extreme case than this where the right not existing originally became one which the court would not disturb since it had been exercised.

In the case of Kamper *v.* the City of Chicago (215 Fed., 706) the city of Chicago, I think, in 1897 had built a tunnel under the lake for the purpose of supplying itself with a needed quantum of pure water, and went below the surface of the land in question without any proceedings of condemnation. The action was brought within a month after the existence of the tunnel work was discovered by the owner. He was denied the mandatory injunction and relegated to his proceeding under the statutes for the ascertainment and payment of compensation.

There are other cases, quite a number of them, following the same general line of opinion, to which I shall not take up the time of the Senate by quoting.

Mr. President, I have detained the Senate unduly in the presentation of the legal phases of the proposition. I have done so not only because the question is a most interesting one, but also because it is a tremendously important one, and one which, if exercised in the public-domain States, will enable the people of those States to utilize not only the body of the waters of their natural streams for domestic and agricultural purposes, but the power as well for the development of their Commonwealths, for the expansion of their industries, for the effectuation of those objects of government for which States are created and which if they discharge their functions properly and effectually must be exercised.

It is true, Mr. President, that until recent specific acts of legislation upon this subject enacted by Congress, and prior to the time when these large reservations were made, this power of condemnation remained dormant, that it was infrequently exercised, but the reason is evident. In the first place, the statutes of the United States, recognizing the existence of these rights, made the way easy for the acquisition of title. Instead of interposing obstacles and difficulties they cleared the way, so to speak, by enactments, some general and others specific. Where the Government, for example, had given the general right of way to railroad companies across the public domain it would be an unnecessary and expensive act for a company to invoke the State power of condemnation for something that it could get so much easier by following the permissive enactments of the Federal Government, and the same has been true with regard to rights of way for water and to reservoirs.

The mere fact that the resort to the power has not been essential may explain to some extent why its discussion seems to be that of a new and strange proposition, but it certainly can not operate to divest the State of the power, if it possesses it. A sovereign power may remain dormant because its use is unnecessary, but it can not be surrendered, misuse or nonuse can not in anywise affect its existence or its extent, and it can always be invoked whenever the necessity for invoking it shall be presented.

Mr. President, if this bill becomes a law, and Congress by specific enactment declares that the power sites withdrawn may be used for the generation of hydroelectric power only by leasing arrangements with the Government itself, one can easily perceive that inevitably the Federal Government will insist that only by the method it has provided can there be any development whatever. The Government will declare, and its courts will be expected to decide, that the power of eminent domain inherent in the States of Nevada and Colorado has been diminished to the extent to which the title of the public lands remains in the Government, and while it is plenary in the State of Missouri or in the State of New York because of the private proprietorship of land within the boundaries of Nevada and Colorado, our equality has been diminished and can never be effectual with and equal to those of the other States, since the Government does not propose hereafter to part with its title to the property to which this bill relates.

Mr. President, I regard that as a condition far more serious, far more sinister as an invasion of the rights of the Commonwealths, of their sovereign power and authority, and therefore far more important, than the development of these resources, and perhaps more important than any other consideration which can present itself to our experience.

It is true, Mr. President, that since the close of the rebellion the powers of the central Government have been largely augmented, and that those of the States have been correspondingly

diminished. It is true, too unhappily true, that many of our States have voluntarily relinquished much of their sovereign power in exchange for appropriations to be expended within their boundaries, thereby relieving their people from the otherwise large taxation which might follow if these rights were retained and exercised as they should be. Indeed, it is common nowadays to assert that the States are prepared, if the appropriation is large enough, to surrender every right which they possess either in detail or in bulk, the consideration being deemed ample compensation and the burdens of taxation being shifted to the shoulders of the Nation.

I stated the other day, not entirely by way of humor, that it has become common to assume that anything is constitutional which Congress sees fit to place upon the statute book. We know that the successive steps taken by the Supreme Court in the construction given to the commerce clauses have now reached a point where we may assert and exercise all the police powers of the States. I am unable to draw a distinction between those acts which have been passed and nearly all of which have been sustained by the Supreme Court and bills which might be enacted whereby the regulation of sanitary conditions and of the lawbreaking elements may be assumed and administered exclusively by the Federal Government.

It may be, Mr. President, that such a policy is better for the people than preserving our powers of self-government. If that is so, then, of course, the sooner the march to absolute centralization shall be accomplished the better. It will do away with discussions like this and enable us in Colorado to look entirely to the city of Washington, both for our legislation and for our revenues for the expense of local administration.

But, for one, Mr. President, while I recognize the necessity of a great extension of governmental authority and activity, legislation like this and acts of a similar character, which must practically eventuate in depriving the States of the fundamental right of existence, or at least of very seriously impairing it, and acts of administration which must necessitate the appointment and employment of scores upon scores of additional employees of the Government, interfering with the laws of the locality, creating irritation, and producing expense far in excess of any revenue that can possibly be derived from the application of this law to our water powers, should only be resisted but by every possible legitimate method.

Mr. President, I know it will be answered, as it has been in the past, that we have wasted our substance, that the great and wonderful resources of this country have been squandered. We have been the spendthrift among nations and have permitted the adventurer, the unprincipled, the unscrupulous, and the criminal to absorb our vast resources and to appropriate their immense values at the expense of the people, and that their remnants will go the way of the rest if the Federal authority fails to preserve it by perpetuating its ownership of it.

Mr. SHAFROTH. Mr. President, before the Senator leaves the matter to which he has just referred, I wish to call his attention to the fact that when he speaks about scores and scores of officers he is going to the minimum of the matter. I wish to call attention to the fact that it is said Mr. Pinchot, in speaking to the Senator from Wyoming [Mr. CLARK] concerning the number of men who would be required in the Forestry Service when he got it in perfect condition, stated that it would require 100,000 employees.

Mr. THOMAS. If this bill passes and is put into operation, I am inclined to think that estimate would not be an exaggeration. Whether it will prove so under existing laws, of course I am unable to say.

I admit, Mr. President, that the land laws of the Government of the United States have frequently been shamefully abused and prostituted to private ends. No man at all conversant with land-laws administration during the last 75 years can deny it. We began by giving grants to private corporations to aid them in the development of the country through the establishment of lines of transportation. We granted empires to the Pacific Railroads and tracts of vast dimensions to institutions and enterprises of less importance, but said to be required for the development of the States. We made a mistake, in my judgment, in doing this. I firmly believe that when the benefits are measured with the evils which resulted from this universal grant of public lands the balance will be upon the side of the evils.

But that was not State, it was national legislation which accomplished this. It was not a State, it was a national policy. Unquestionably the men who organized and consummated such methods of Government aid were for the most part actuated by lofty motives and patriotic purposes. Unquestionably the Congress of the United States which initiated that policy had the best interests of the people at heart. So my strictures should be confined to the system and should not involve the good faith of the early pioneers in land legislation, who had for their purpose the development of Commonwealths and the settlement of the vast area between the Mississippi River and the Pacific Ocean.

Mr. President, that policy did recognize the tremendous importance of so disposing of the land that the citizen could ultimately secure title to it. It did place into private ownership these enormous tracts, at least to the extent of submitting them to taxation. The disposition of their lands by the railroad companies has been constant, and the occupation of the land has therefore been in accord with that element of the national policy.

In that particular, Mr. President, I am reminded that when the Union Pacific Railroad was organized, when the great enterprise was contemplated, it was the oriental traffic, and the oriental traffic only, which constituted the theoretical basis of its revenues. Every financial scheme designed for the promotion and completion of the enterprise looked for its success and its profit to the oriental traffic, passing from the Continent of Asia, across the Continent of America, and reaching the great markets of Europe. If anyone had at that time suggested any other source of revenue, and particularly a local source of revenue for the enterprise, he would not have received decent consideration.

But in 1887 the president of the road, in an article published by Scribner's Magazine in that year entitled "A great event in history," gave a graphic and interesting account of the completion of the road and the joining of the extremities of the Central Pacific and the Union Pacific near where the city of Ogden now stands. He called attention to this original basis of financing the road, and then declared that in 1885 the local development had grown so rapidly, population had come in so enormously, so many States had been formed along the line of the road, that the local traffic—the continental traffic perhaps would be a better expression—constituted 95 per cent and the oriental traffic but 5 per cent of its enormous receipts. In other words, the thing which was looked to as the financial basis of the enterprise became as nothing; the element of development of the country, which was hardly considered as one contributing to the revenues of the railroad, became its mainstay and support. So there was an element of benefit to the Nation, and certainly to that section of the country, in the building of this great highway through public aid, since it attracted this enormous population; and with the development of the country through private ownership and private enterprise, the business contributing to the road enabled it to meet its obligations and to yield a profit to its promoters and owners. That, however, was but the first step.

Mr. President, there is no doubt, and no one can dispute the fact, that between 1865, when the Civil War was brought to a close, and 1900, when the old century expired, the domain of the United States was plundered and stolen in a way shocking even to the extravagant ideas of that period. How was it done? Through the operation of Federal statutes, combined with their methods of administration by Federal employees and the heads of departments. Millions of acres of coal land, millions of acres of splendid timberland—all these were acquired, Mr. President, not from the States, not from State administration, not even through State connivance—but they were acquired through the operation of the laws of the United States, plus their administration by men who, to say the least of it, had little regard for their duties or for the rights and the welfare of the public.

One of the pitiable things about the Forestry Service is that largely through its agency the great timber reserves of the United States have passed into private ownership. It was perfectly easy. A forest reserve under the law could be created by administrative order. If a reserve was created which embraced land held in private ownership, the law gave the owners the right of exchanging it for any other nonmineral land of the United States which were open to occupation or purchase.

Why, Mr. President, the manufacture of forest reserves under the operation of that system became a business, an occupation of some of the great combinations of the country. Let me give an instance which I recall. The Santa Fe Railroad Co. secured the extension of, I think it was, the Navajo Reservation—I am not certain of the name—so as to embrace a vast area of lands reserved as a part of the grant to the old Atlantic & Pacific Railroad Corporation which had passed to it, which were worthless, and then, under the lieu law, simply exchanged those lands for an equal area of the magnificent forests of Oregon and Washington. My recollection is that through its operation they were able to secure to themselves over 500,000 acres of forest lands equal to any land in the world for as

many acres of land that would hardly sustain a jack rabbit over night. What that company did citizens of the United States did and other corporations did, until by 1900 the amount of timberland worth having in those States became a negligible quantity.

Mr. President, such a situation could not have arisen if those lands, instead of being owned by the United States, had been conveyed to the States respectively. The Santa Fe Co. could not under such conditions have exchanged its worthless desert lands in Arizona for the magnificent timberlands of the State of Washington, nor could some of the private owners of my State have secured the extension of our forest reserves so as to take in thousands of acres of land upon which a tree never grew and upon which a tree never can grow, for the purpose of securing exchanges for better territory, the prospective value of which it is extremely difficult to estimate.

Mr. SHAFROTH. Mr. President——

Mr. THOMAS. I will yield to my colleague in just a moment.

The Union Pacific Railroad Co. at one time filled the streets of Denver with men—adventurers, poor men—for the purpose of securing entries of coal lands in their names, only to be transferred to that corporation just as soon as the entries were made, all in compliance with the letter of the law and made possible, through the cooperation—passively, if you please, but the cooperation—of officials charged with the duty of administering these land laws both in the city of Washington and in the land districts of the country. I now yield to my colleague.

Mr. SHAFROTH. Mr. President, in relation to what the Senator from Colorado has just stated concerning the land grants that were made by the National Government to the various railroad companies, I wish to call his attention to the fact that there were 43 railroad grants made by Congress, and that they aggregated 155,504,994 acres, being an area equal to all of the thirteen original States.

Mr. THOMAS. And the Senator might have added, Mr. President, that the bulk of the land contained in those grants is as good as the best of the lands in the country.

Mr. President, very naturally these shocking exhibitions of personal and corporate cupidity produced a reaction; reactions nearly always go to the other extreme. A school of land administration, if I may so call it, sprang into existence, consisting of men of high character and lofty motives, intent upon serving their country from their standpoint, some of whom unfortunately have become obsessed with the notion that unless the pendulum shall not only swing to but be kept at the other end of the arc these unhappy practices will persist until nothing of the national patrimony shall be left to the people. As a result, the citizens of the United States desiring homes and willing to comply with the law's requirements, some of which are pretty hard upon a poor man, or desiring to prospect upon the public domain for gold, or silver, or lead, or copper, or for phosphates, or for oil and gas, is not only regarded with suspicion, but is treated as such from the inception to the end of his claim. I do not mean to say that that is universally true; I do not mean to say that the policy has been the outgrowth of the action of men who really believe, or would for a moment confess that that is so. I have reference to the operation of the system which has been the outgrowth of these conditions.

My State is being punished, and the good citizens of my State are being punished, as are those of the other arid States of the Union, for sins which were committed by others, which they denounced quite as severely as anyone, which they denounced before anyone else did, to which they called the attention of the Government time after time. These men are unfortunately those who suffer the consequences of that condition. The Government says to citizens of my State: "If you discover oil, or gas, or phosphates anywhere, we will reserve it." I once heard a story, when I was a boy, of a woman who was always looking out for burglars. One night she awakened her husband, saying: "There is a burglar in the house." "All right," the old man said, "let him hunt, and if he finds anything we will get up and take it away from him." [Laughter.] In a way, such is the Government's policy now with reference to its mineral domain. Let the citizen hunt, and, if he finds anything, then it arouses itself and takes it away from him.

Mr. President, what sort of an inducement does such a policy hold out to the man of adventure? This country was settled and populated by those following in the wake of men of adventure. The first man to cross the plains and to brave the dangers of an inhospitable climate, and of the more inhospitable savage, who subjected himself to thirst and to the hazard of disease, who separated himself from all the elements of civilization and penetrated those solitudes, was drawn there by the lure of gold and silver, and because he knew that if he discovered either a generous Government would recognize his possession of it and reward him accordingly. The tide of humanity now occupying that country followed the trail which the pioneer for gold and silver blazed across the desert. They devoted themselves to the cultivation of the earth; they anchored themselves to the soil; and with the prospector they built up those magnificent communities now covering the continent from the Missouri River to the Pacific Ocean.

I ask you, Mr. President, what would have been the fate of that section if the policy of which this bill is a good illustration had been enforced at that time? Would the prospector have penetrated the wilds of the Rocky Mountains in his search for gold if, as soon as it was known that he had discovered it, he had been sure that the Government would withdraw it from location? Would these splendid reservoirs of oil, which have been opened up in Wyoming and in California, and earlier than that period in my own State and in other States upon the public domain, have been revealed if such a policy had been proclaimed years ago?

I do not know, Mr. President [Mr. HUSTING in the chair], whether you have been in that section of California where these new oil reservoirs have been discovered. It is literally a desert country; a country not designed for human habitation; a country lying under the interdict of drought; a country far removed from every comfort of civilization, a country good only for the stores of wealth that lie beneath its scarred and barren and repulsive surface.

The sufferings which those men endured and the hazards which they encountered in their discovery of oil are, to my mind, but poor compensation for the benefits which they have conferred upon this Nation through the additions which they have been able to make to its stores of material wealth; but a generous Government, harking back to the things that transpired during the last century and to offenses committed by others, has said, "You can not have title to these properties; they are reserved under the principle of conservation; they are withdrawn from private ownership." We will lease some of them, provided laws are passed for that purpose. Though some of those wells are running, and all of them must be cared for, prosperity lags, and honest men are going to wreck and ruin through a policy which is not only mistaken but cruel.

Now, Mr. President, with regard to the immediate subject of this bill, every water power in my State which is still undeveloped, every water power in the great and magnificent State of Montana which is now undeveloped, can and should be developed under the laws of our respective Commonwealths, without doing injustice to anyone, without in any wise militating against that abhorrence of monopoly, which is the common sentiment of the people of the United States. Indeed, Mr. President, these monopolistic conditions are emphasized by our inability to develop these natural resources and the consequent competition that might ensue.

The great State of Montana has a magnificent public-utilities commission; the State of Colorado has one equally as good, and so have the other arid States. They are composed of men able and willing to protect the public interests, and to so regulate compensation as to relieve the people from the burdens of extortion. Under what principle, therefore, can it be said that the people who have created these Commonwealths, whose loyalty to the Government of the United States is as active and as constant and as sincere as that of the people of any other section, whose interests and the interests of whose children are identified and wrapped up in the prosperity and the growth of those great Commonwealths—upon what principle, Mr. President, can it be said that these people can not be trusted to do their own development, that they must be kept in a state of tutelage and guardianship by the National Government situated 3,000 miles away and administering its laws through its local tentacles in the shape of representatives upon the ground?

I think, Mr. President, that this bill is radically and fundamentally wrong. The only doubt I have upon the subject lies in the fact that my distinguished friend from Montana [Mr. WALSH] believes to the contrary. I have such a high opinion of the Senator as a statesman, as a lawyer, as a citizen, and as a friend that I must necessarily believe that there may be some good in this bill or it would be impossible that it should receive his loyal support; but, Mr. President, I am reminded that there was a time when the Senator and myself were more nearly together upon this subject than we seem to be at present. His views have been modified, for the best of reasons unquestionably, but I must be pardoned if I walk in the old paths and stand by the ancient ways. I certainly hope this bill will not become a law.

APPENDIX.

EMINENT DOMAIN—RIGHTS OF WAY OVER LANDS OF UNITED STATES OR STATE.

[Senate bill No. 334, by Senator Williams.]

An act relating to the appropriation of land for corporate and public purposes, to the procedure for appropriation of land and rights in land belonging to the United States, the State of Colorado, or any other State or sovereignty, and to actions by property owners against such corporations in possession.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Whenever any corporation authorized to appropriate for a public use, by the exercise of the right of eminent domain, lands, right of way, or other right or easement in lands, requires, needs, or desires to appropriate lands or right of way or other right of easement in lands which belong to the United States, the State of Colorado, or any other State or sovereignty, such corporation, for the purpose of having such lands, right of way, or other right of easement appropriated to such use, and for determining the compensation to be paid to such owner therefor, may present a petition to any court of record in the county or counties in which such lands or any part thereof are located, describing the desired property, giving the name of the owner thereof, and stating by whom and for what purpose it is proposed to be appropriated, and that it is needed and required by the petitioner for the public use to which it is proposed to devote the same, and praying that such court appropriate such property to its use and determine the compensation to be paid to the owner therefor.

SEC. 2. Such court shall fix a time for the first hearing upon said petition, and notice directed to such owner of the filing of the petition and its objects and containing a description of the property and of the time and place of the first hearing shall be published by such corporation in one or more newspapers of general circulation in the State of Colorado once a week for six weeks prior to the time set for the first hearing, and at least two weeks before the time set for the first hearing a copy of said notice shall be served on any party who shall be in actual possession of the land, and in case the State is the owner, on the secretary of state, and in case the United States is the owner, on the United States attorney for the district in which the land or any part thereof is situated. The copy of such notice shall be deemed to have been sufficiently served if delivered during the usual hours of business at the residence of the party in possession or at the office of the secretary of state or the United States attorney, as the case may be.

SEC. 3. Upon proof being filed of the publication of such notice and of such personal service where required, the court, at the time and place therein fixed, or to which the hearing may be adjourned, shall proceed to hear the allegations and proofs of all persons interested touching the matters to it committed, regulating the order of proof as it may deem best. The testimony taken by it shall be under oath. The court shall determine the truth of the matters alleged and set forth in the petition and also the compensation to be paid to such owner for the lands, right of way, or other right or easement in lands to be appropriated; but in the event that the petitioner shall have theretofore taken possession of such lands, right of way, or other right or easement in lands, the value thereof shall be determined without considering the value of any improvements that may have been constructed by such corporation and as of the date when such corporation took possession; and the court shall file among its records its findings in writing and shall give notice to the petitioner that its findings have been filed. The petitioner shall cause a notice to be published in one or more newspapers of general circulation in the State of Colorado once a week for two weeks setting forth that the findings of the court have been filed and stating the amount of the compensation fixed by the court, and if the owner shall have appeared in said proceeding by attorney a copy of said notice shall be served prior to the last publication of said notice upon the attorney so appearing.

SEC. 4. In case no appeal, as hereinafter provided, is taken within 30 days after the last publication of notice that the findings of the court have been filed, the court, upon the payment by the petitioner to the clerk of such court, of the compensation fixed by the court, shall, upon motion of the petitioner, enter an order appropriating the lands, right of way, or other right or easement in lands, as the case may be, to the petitioner, and thereafter the same shall be the property of the petitioner and a certified copy of the order may be filed for record with the county clerk and recorder of the county in which such lands, right of way, or other right of easement in lands are located, and such record shall be notice, and a certified copy of such record shall be evidence of the title and rights of the petitioner as therein set forth. The clerk of said court shall notify the owner of the property of the payment of the compensation fixed by the court and shall pay the same to such owner on demand.

SEC. 5. Upon the payment into court of the compensation assessed the court shall give judgment appropriating the lands, right of way, or other right or easement in lands, as the case may be, to the petitioner, and thereafter the same shall be the property of the petitioner. Either party to the action may sue out a writ of error from the judgment therein in like manner and with like effect as in ordinary condemnation cases, but such writ of error shall not stay the proceedings so as to prevent the petitioner from taking such lands into its possession and using them for the purposes of the petitioner or from proceeding to exercise the right of way or other right or easement appropriated.

Approved April 23, 1915.

Mr. WALSH. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HUSTING in the chair). The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bankhead	Hitchcock	Page	Sutherland
Beckham	Hughes	Phelan	Thomas
Borah	Husting	Pittman	Thompson
Brandegee	James	Poindexter	Tillman
Bryan	Johnson, Me.	Ransdell	Underwood
Chamberlain	Jones	Robinson	Vardaman
Chilton	Kenyon	Saulsbury	Wadsworth
Clark	La Follette	Shafroth	Walsh
Culberson	Lee, Md.	Sheppard	Warren
Cummins	Lewis	Smith, Ariz.	Watson
Fall	Lippitt	Smith, Ga.	Weeks
Fletcher	McLean	Smoot	Works
Gallinger	Martine, N. J.	Sterling	
Hardwick	Norris	Stone	

Mr. WALSH. I desire to announce that the Senator from Missouri [Mr. REED] is absent on account of illness.

The PRESIDING OFFICER. The Chair desires to announce the unavoidable absence of the Senator from South Dakota [Mr. JOHNSON].

Mr. LEWIS. I announce the absence of the Senator from Ohio [Mr. POMERENE], who has been called out of the Chamber on official business.

Mr. PITTMAN. I desire to announce that the Senator from Montana [Mr. MYERS] has been called to one of the departments on official business.

The PRESIDING OFFICER. Fifty-four Senators having answered to their names, there is a quorum present.

Mr. WALSH. Mr. President, it was my opinion that the somewhat elaborate presentation of the principal features of this bill by my colleague [Mr. MYERS] when it was last before the Senate for consideration would render it unnecessary to consume any of the time of the Senate in discussing the bill as a whole, and it had accordingly been my purpose to reserve whatever I had to say for such occasions as might arise in connection with the presentation of amendments to the bill. However, the wide range the discussion to which we have just listened has taken has led me to the conclusion that it would be helpful to those of the Senators who have endeavored to inform themselves as to this bill if a brief statement, at least, were made concerning what the bill is about and what it is intended to accomplish. I accordingly determined this morning and gave notice that at the conclusion of the remarks of the Senator from Colorado I would address the Senate for 30 minutes. I hope to conclude within that time, and I do not think it will take me more than 40 minutes at the outside.

The discussion of this bill by the Senator from Colorado—for whom I have the very warmest affection and the very highest regard—has, if I may be justified in so saying, taken on the aspect of a general criticism of the whole administration of the public-land laws as well as of many of those laws. I am going to endeavor to direct the attention of the Senate in what I shall say to this particular bill, leaving the other things of which we justly complain in the West to be taken up and disposed of and solved in their regular order.

I sent to the desk this morning extracts from recent newspapers showing how deeply concerned some of the leading nations of Europe are to-day over the development and utilization of their water-power resources. These two articles referred to the activities of the Kingdom of Italy and the Republic of France. But, of course, it is well known that the greatest water-power development of Europe within recent years has occurred within the Scandinavian countries and in Germany. I shall show you a little later on how development has been arrested in this country.

It is not necessary, I am sure, for me to say anything more than I have heretofore said to the Senate to excite your interest in this profoundly important legislation. The President of the United States, upon taking office in the year 1913, called the attention of the Congress to this subject in a message which he delivered in accordance with the duty imposed upon him by the Constitution. In his annual message delivered at the convening of Congress on December 2, 1913, after pointing out the necessity of legislation looking to the development of Alaska and the construction of a railroad in that Territory, he said:

> But the construction of railways is only the first step; is only thrusting in the key to the storehouse and throwing back the lock and opening the door. How the tempting resources of the country are to be exploited is another matter, to which I shall take the liberty of from time to time calling your attention, for it is a policy which must be worked out by well-considered stages, not upon theory, but upon lines of practical expediency. It is part of our general problem of conservation. We have a freer hand in working out the problem in Alaska than in the States of the Union; and yet the principle and object are the same wherever we touch it. We must use the resources of the country, not lock them up. There need be no conflict or jealousy as between State and Federal authorities, for there can be no essential difference of purpose between them. The resources in question must be used, but not destroyed or wasted; used, but not monopolized upon any narrow idea of individual rights as against the abiding interests of communities. That a policy can be worked out by conference and concession which will release these resources and yet not jeopardize or dissipate them, I for one have no doubt; and it can be done on lines of regulation which need be no less acceptable to the people and governments of the States concerned than to the people and Government of the Nation at large, whose heritage these resources are. We must bend our counsels to this end. A common purpose ought to make agreement easy.

And so, Mr. President, I am very confident that if we all have an earnest desire, as we all ought to have, to open up these resources, we shall find some way to do it, at least if we shall yield our own individual ideas concerning academic principles and consider the bill as a great business proposition.

Let me explain the conditions to the Senate. It is only within the last 10 or 15 years that the people of the United

States have come to understand that these great power sites upon the public domain are of enormous value. Why, prior to that time, Mr. President, nobody paid any attention to them. All of the public-land laws were applicable to them. A man might take a homestead which would embrace ground upon which eventually a great water power would be developed.

These lands might be appropriated and title to them secured through the operation of any of the public-land laws. Many of them were taken under the mineral laws—not dishonestly, at all, but in the immediate neighborhood mineral was found and the bounds and areas of the grant were extended over the lands which had value as a power site. They were open to appropriation under all forms of scrip—forest-reserve scrip, Valentine scrip, Sioux half-breed scrip, agricultural college scrip. Any of the laws authorized and permitted one to go out and appropriate one of these exceedingly valuable properties. But, as I say, some 10 or 15 years ago it was recognized that that was an unwise, an injudicious, and an improvident disposition of lands of that character, and accordingly they were all withdrawn from all forms of entry, looking to the enactment by Congress of some legislation for their disposition appropriate to their character, considering the use to which they could most profitably be put.

Mr. HITCHCOCK. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Nebraska?

Mr. WALSH. I do.

Mr. HITCHCOCK. Will the Senator state whether, during the periods that they were open for entry or purchase under the various laws of the United States, any of these water-power sites went into private hands?

Mr. WALSH. Why, Mr. President, there is more developed water power per capita in the State of Montana than in any other State in the Union, and it has all been developed upon such lands which have thus passed into private ownership. The great development at Great Falls, 90,000 horsepower, is upon lands that passed out of the hands of the General Government years ago and went into the hands of private holders. The present owners purchased the land from the owners and developed the water power.

Mr. THOMAS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Colorado?

Mr. WALSH. I yield to the Senator from Colorado.

Mr. THOMAS. May I ask the Senator if the same statement could not be applied to the property of the great Anaconda Copper Mining Co.? Did not the Government sell that property for $5 an acre—property worth hundreds and hundreds of millions?

Mr. WALSH. Undoubtedly.

Mr. THOMAS. Would the Senator think that that, also, could have been reclaimed?

Mr. WALSH. I do not think anything of the kind. The two stand upon an entirely different footing, as I shall endeavor to show presently. I shall show to the Senate that the only just view to take of these great water-power sites is that they are in the nature of public utilities, and are to be disposed of as franchises for public utilities are disposed of, and not as private lands.

Mr. SHAFROTH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the junior Senator from Colorado?

Mr. WALSH. I trust the Senator will allow me to go on, because I have promised to quit in 40 minutes.

Mr. SHAFROTH. I just want to ask a question right there.

Mr. WALSH. Certainly.

Mr. SHAFROTH. Is it not a fact that the leader of this great conservation movement has said time and again that it is his purpose to have all of the mineral lands in the United States subject to withdrawal and subject to a leasing system by the National Government?

Mr. WALSH. Mr. President, it does not make one bit of difference to me what the great leader of the conservation movement in the United States has said. He does not furnish me either brains or ideas. I take all responsibility myself for any ideas that I express here. I will say, however, in answer to the Senator, that I have followed this subject since it began to be agitated in the public press and in public gatherings, and I never heard the idea suggested by anybody that mineral lands valuable for the metallic contents of ores within them should ever be leased. That, I dare say, will answer the Senator's question.

Mr. SMOOT. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Utah?

Mr. WALSH. I do.

Mr. SMOOT. Is it not a fact that there is now upon the calendar a bill authorizing the leasing of metalliferous mineral lands upon Indian reservations?

Mr. WALSH. There is.

Mr. SMOOT. Does not the Senator believe that that is simply a first step to having it extended to the general public lands?

Mr. WALSH. I do not. I do not believe anything of the kind.

Mr. SMOOT. Of course, from what has occurred in the last four or five years, and from what I have heard a great many public men say in their utterances, that is what will take place before very long, if they have their way.

Mr. WALSH. I would not like to be diverted now, Senators, from the discussion of the water-power legislation to the discussion of legislation looking to the disposition of the mineral lands. We have a bill here on that subject coming on next. I am very much responsible for it being here. I shall be pleased to talk about that with you when it is before us for consideration. Let us talk about water power now for a while.

Mr. SHAFROTH. But, Mr. President, if the Senator will permit me, he says that he has never heard of anybody even suggesting that the mineral lands should be subject to a leasing system. I will ask the Senator if he is not a member of the Indian Affairs Committee and if that committee has not reported a bill which says:

> That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him and under such terms and conditions as he may prescribe, not inconsistent with the terms of this act, to lease to citizens of the United States or to any association of such persons or to any corporation organized under the laws of the United States or of any State or Territory thereof, any part of the unallotted lands within any Indian reservation heretofore withdrawn from entry under the mining laws for the purpose of mining for deposits of gold, silver, copper, and other valuable metalliferous minerals, which leases shall be irrevocable, except as herein provided, but which may be declared null and void upon breach of any of their terms.

Does not the Senator realize that there are of those Indian lands reserved now in the State of Arizona 19,551,045 acres, in California 436,000 acres, in Colorado 375,000 acres, in Idaho 55,000 acres, in Nevada 4,313,000 acres, in New Mexico 689,000 acres, in Oregon 1,889,000 acres, in Utah 306,000 acres, in Washington 3,150,000 acres, and in Wyoming 608,000 acres? And does not the Senator realize that the policy of opening Indian reservations heretofore has been for the purpose of entry under the system which he says is the only system which should be pursued by the Government with respect to mineral lands?

Mr. WALSH. Mr. President, I regret that the Senator felt that I yielded to him for the purpose of making a speech.

Mr. SHAFROTH. I have asked the Senator a question.

Mr. WALSH. I shall answer the Senator. I shall be very glad, in the course of what I have to say, to answer any questions that may be addressed to me by any Senator, in order to make my position more clear and to give information; but I trust now that I shall not be asked to get away from the water-power problem and talk about Indian lands or the sale of Indian lands.

I was asked by the senior Senator from Colorado [Mr. THOMAS] what I would say about the great Anaconda mine. I answered him quite frankly. Senators will understand that the lands upon Indian reservations to which this bill relates are not subject to entry in any way at all, mineral or nonmineral. One can not enter there to acquire any right whatever to the lands which are set apart for the exclusive use of the Indians. If one were to go within an Indian reservation for any such purpose, the Indian police would promptly evict him.

The senior Senator from Colorado [Mr. THOMAS] asked me if I wanted to apply the leasing system to mineral lands containing minerals like gold, silver, copper, lead, and so forth. I answered him that I did not; and I never heard anybody—the head of the conservation movement or anybody else—say that it ought to be done.

Mr. THOMAS. Mr. President——

Mr. WALSH. If the Senator will pardon me just a minute, there is no possibility now of working mineral lands within any reservation under any law; but a bill has been introduced under which the commissioner is authorized to allow one to locate a claim within an Indian reservation and to work it under a lease if he cares to, a concession to the prospector and miner never hitherto enjoyed.

Mr. THOMAS. I beg the Senator's pardon for again interrupting him. The purpose of my question was merely to ascertain whether, in the opinion of the Senator, the original cost of the land transferred from the Government of the United

States was an argument against that sort of policy; and if so, whether he would apply it to mining land as well as reserves? If I conveyed the impression that I was asking whether the Senator would apply the leasing system, I was unfortunate in my expression.

Mr. WALSH. That was the way I understood the Senator. I was asked by the Senator from Nebraska [Mr. HITCHCOCK] whether any development had gone on upon these lands which had thus passed into private ownership, and I answered him that all the development in our State, 250,000 horsepower—a greater horsepower per capita than in any other State in the Union—has been upon these lands which have thus passed into private ownership.

Mr. THOMAS. Has it not been a benefit to the State?

Mr. WALSH. I am not going to argue that matter now at all. I am not going to dispute that it has been a benefit to the State. I am simply stating the fact. Mr. President, the question before us is as to whether we shall cancel all these withdrawals and allow these great, valuable water-power sites to be appropriated in the future as they have been in the past under the general laws of the United States, or whether we shall have some law specially applicable to lands of that particular character. They are all withdrawn now.

It should be stated, Mr. President, that, although these lands were withdrawn, an act of Congress passed in 1901, when it began to be appreciated that the problem we are facing required some attention, under the provisions of which the Secretary of the Interior was authorized to grant to one a permit by which he could go upon the public lands and there develop a water-power site. That law, however, contained a clause which was to the effect that the Secretary of the Interior might at any time revoke the permit which was granted by him. In the year 1909 a large number of these permits having been theretofore granted, the Secretary undertook to exercise the power which apparently had been granted to him by the act and recalled a large number of such permits, under some of which no little development work had been done, and under not a few of which large expenditures had been made. Since that time, it being appreciated that the Secretary had the power to revoke such permits, and would revoke them whenever he felt that he ought to do so, the issuance of permits under the act of 1901 has, speaking in a large way, ceased. So that we are in this situation: Here are these wonderful power sites, capable of producing under proper development something like twenty-eight to thirty million horsepower, and there is no law whatever under which they can be appropriated or utilized for the benefit of mankind; and so the necessity rests up the Congress of the United States to legislate upon the subject.

Mr. President, I do not stand sponsor for any bill here. I do not stand sponsor even for the bill which came from the House. I do not stand sponsor by any means for many of these amendments which have been reported by the Senate Committee on Public Lands. But I am here pleading with the Senate of the United States to take this matter into prayerful consideration, and to work out some bill that will throw these great properties open to the public for development upon terms that will be fair and just to anyone who is willing to put his money into such an enterprise. A gentleman fully advised about this matter told me the other day that he had just come from the city of New York and was there informed that there are three hundred millions of dollars ready to go into water-power development in this country.

Mr. President, I referred here this morning to the great power site of the Big Horn Canyon. The Big Horn River rises in the State of Wyoming and flows northward into my State. The canyon is about 50 miles long, affording storage so extensive and fall sufficient to make the site capable of producing, as my recollection is, something like 194,000 horsepower with a dam no higher than the dam which the Republic of France is now erecting in the Alps to supply power to the city of Paris. The turbulent waters of the Big Horn rush through this great canyon unrestrained. Bear in mind, Mr. President, that we are now operating 400 miles of the Chicago, Milwaukee & St. Paul road, one of the transcontinental lines, by electricity. The Great Northern Railroad Co. is preparing to electrify its road; and when it does there is not a transcontinental line that can stay in business without electrifying. The demand for the power is there.

Why, Mr. President, I told you that we have already 250,000 developed horsepower in the State of Montana, a further development of 35,000 horsepower is now going on, and all has already been sold.

Mr. HITCHCOCK. Mr. President, has the Senator any estimate of the yield in rental under this lease system?

Mr. WALSH. The Milwaukee road pays about $20 per horsepower.

Mr. HITCHCOCK. I mean, what yield would come to the United States Treasury?

Mr. WALSH. I am going to canvass that subject a little later on.

Mr. President, there is another thing. You will bear in mind now that our development, say, in the State of Montana, as in the adjacent States, has practically gone to the limit. We have utilized nearly all of the lands valuable as great power sites that have passed into private ownership. We can not go forward at all without utilizing these lands being a part of the public domain. The Government owns the land on one or both sides of the stream from the flow of which power may be generated. No one may build a dam there without the consent of the Government of the United States, which owns the adjacent land. Thus, Mr. President, it results that those who have already acquired the sites which have passed into private ownership have a monopoly of the water power. So it is in other sections of the country. The other bill pending here, dealing with another aspect of the same question, known as the Shields bill—many features of which, you will recall, I fought with some pertinacity—is intended to relieve a similar situation. That contemplates the opening up of other power sites upon the navigable streams of the country, though no public lands are involved. It, too, is hung up, and thus a monopoly is enjoyed by those companies which got in at the time grants were more freely given.

Mr. President, legislation is necessary.

Mr. SMOOT. Mr. President, before the Senator leaves that subject may I ask him a question?

Mr. WALSH. I shall be glad to answer the Senator.

Mr. SMOOT. In the report made by the Secretary of Agriculture, is it not stated that at the present time there is an overproduction of electric power in the Western States?

Mr. WALSH. Oh, yes.

Mr. SMOOT. And that the real demand is for more markets rather than for more power?

Mr. WALSH. Mr. President, I trust the Senator will not trouble himself very much about that. Maybe he does not want any power development in Utah. Maybe they have all the power development in Utah that that State can utilize. The situation in Montana is quite the contrary. My information is that money is ready to go into power development in the State of Utah and that a market can be found for more energy there. Why should we defer because some subordinate in some bureau here in Washington asserts that there has been overdevelopment? I tell you there is nothing to it. Why, Mr. President, there is the Senator from Idaho [Mr. BORAH]. I will ask him if the needs of his State are met by the power sites that have been developed in Idaho?

Mr. BORAH. Oh, no; no, indeed.

Mr. SMOOT. There is no other Western State that has developed all the water powers. Nobody has made that statement.

Mr. WALSH. Mr. President, if legislation is necessary, what are the principles, please, upon which that legislation should rest? That is the question that addresses itself as a practical proposition to the Senate at this time.

There are two schools of thought about that matter. One school of thought is that these power sites ought to be granted away in perpetuity, alienated in fee. The other school of thought says: "No; that is not right. They should be leased for a limited period, and after that limited period they should come back to the Government."

Now, you have heard a lot about the leasing system and about the landlord system and about absentee landlordism, as if it were proposed that every man who has a little home, a little farm, should pay rent to the Government for it. The history of all ages demonstrates, all writers on economy agree, every man's experience teaches him that the man who cultivates the soil ought to own what he tills, and I have never heard the contention advanced anywhere that any agricultural lands owned by the Government should pass from it by any title except a fee-simple title.

It is so as to the home of a man in the city or town. We have a law by which, when people go out on the public domain and gather themselves into communities around a mine, or at a center of trade, they may take 640 acres as a town site, and every man is entitled to the little piece of ground upon which he builds his house, and he gets title to it in fee. No one wants to disturb that. But, Mr. President, people do not build their homes upon water-power sites nor on top of coal mines. So when we discuss water-power sites or the disposition of oil lands or coal lands we ought not to be confusing by talking

about a man paying rent to an absentee landlord for his little home or for his farm.

The bill to which attention has been called, referred to as the Lever bill, which it might be supposed from the statement of the Senator who adverted to it in the course of his remarks, was to institute a system under which every one hereafter would hold whatever land he got from the Government by a lease rather than by a title in fee, even that very bill was framed by people who profess the greatest attachment to the interest of the homesteader, who whenever he got any land under it at all got a title in fee. It simply provided that instead of allowing the people of the West, as they have done from time immemorial, to run their cattle without charge over the public domain, certain areas should be classified and leased for grazing purposes, the homesteader having the right at all times to go within the leased area, acquire the land he settled upon, and get title to it. We all objected to it simply because we felt that the homesteader would be deterred from appropriating any part of the area set off to a cattleman under his lease. It had no features of a bill such as was referred to, under which agricultural lands were to be held indefinitely by the Government and disposed of only by lease.

But, Mr. President, getting back to the question as to whether these power sites shall be granted away in fee or leased for limited periods, those who have given the most earnest thought to this subject, with a sincere desire to solve the problem, have reached the conclusion that these lands should be treated exactly as we treat franchises which are granted by a city; that we ought to grant a right to occupy them for a limited period, something in the nature of a franchise, not grant them away in fee. A man applies for liberty to run a street car line in a certain city. Formerly improvident grants were made of the privilege to run a street car line in a city in perpetuity. But we have reached the conclusion that that is not a wise policy, and now we give a man a franchise or a license to run his street car line in a city for a limited period, 20 years, 30 years, 40 years, 50 years, and at the end of that time the streets come back to the city unencumbered by any burden.

So, Mr. President, it is contended that we should do with reference to these power sites. We should give the man who wants to develop and operate a power site the privilege of occupying the ground for a period of years—50 years, this bill stipulates—and at the end of that time his right to occupy the land should cease, leaving to our children and our grandchildren to deal with the sites as seems best to them in view of the conditions which will confront them at that remote period. We ought not to turn these properties potentially so valuable over in our time to private appropriators who with their successors should enjoy the advantages springing from them throughout all time.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Idaho?

Mr. WALSH. I yield.

Mr. BORAH. I do not desire to break into the very able argument which the Senator is making, but the two schools of thought of which the Senator speaks are not the only schools of thought with regard to this matter. There are some of us who do not desire that these power sites shall be turned over to private individuals indefinitely, but who nevertheless do not desire to have them operated by a foreign government, as it were, that is, foreign to our State. If they could be turned over to the State to be operated and used as we use other franchises within the State, or if they could be turned over to the State to be owned and operated by the State, operated as public property of the State, it would present an entirely different question. I would like to see these natural monopolies owned and operated by and for the public.

Mr. WALSH. Exactly. I propose to reach that phase directly. Of course everybody understands the position taken by the Senator from Colorado. He wants you to turn these things over to the State, to pass a simple law to the effect that all power sites on the public domain are hereby granted to the State in which the same are located.

Mr. THOMAS. Will the Senator permit an interruption?

Mr. WALSH. Certainly.

Mr. THOMAS. I think that, perhaps, would be the better way of disposing of the matter, but I would be more than satisfied with the grant of the power sites to the States, subject to restrictions with regard to the business, which would require a forfeiture in the event the restrictions were not observed; or what would suit me still better would be a grant to the States upon condition that they be developed by the States and utilized by the States for the benefit of their inhabitants.

Mr. WALSH. I propose to meet that condition. I did not intend to speak about that now, but at the proper time I shall propose an amendment to the bill which reads as follows:

The Secretary of the Interior is hereby authorized to grant, in the name of the United States, to any State, county, or municipality or other political subdivision of a State any tract or tracts of public land such as is defined in section 1 of this act, not to exceed 160 acres in one body, valuable chiefly because capable of being utilized in the generation or transmission of hydroelectric power, upon condition that such State, county, municipality, or other political subdivision shall, with all reasonable diligence, develop and utilize continuously such tract or tracts for the purpose for which they are so valuable. The tract or tracts so granted shall be inalienable and the right of the grantee shall terminate upon failure to comply with the conditions of the grant.

There is no use talking about turning the power sites over to the States, letting each State dispose of those within its bounds as it sees fit, but I believe there is a sentiment here which will justify us in enacting a law granting to every State that wants to develop a water-power site the right to do so; which will permit every irrigation district that desires to develop a water-power site for the service of the people comprising it to do so; which will give every city that wants to develop water-power sites for the purpose of supplying its inhabitants with electricity an opportunity to do so. We will reach that phase of the question directly, and I shall ask Senators who vaguely propose such a course frankly to state, when I reach that part of my argument, whether they think there is a chance on earth to secure the enactment of a law under which power sites on the public domain shall be turned over to the States. I prefer to direct the thought of the Senate to something practical, to urge consideration for something we can get through during the present generation.

Mr. President, I resume the question, shall we grant in perpetuity, shall we alienate these lands in fee, or shall we permit their occupancy for a limited period, the lands then to come back to the General Government for such disposition as the wisdom of future ages may suggest? I believe that if we should test out the sense of the Senate on that proposition there would be found little division of opinion about the matter.

The distinguished Senator from California [Mr. WORKS] has a substitute which he has offered to this bill by which it is provided that these lands shall be appraised and sold at the actual value of the same to anybody who wants to buy. When that substitute comes up I shall give you my reasons for opposing it. I shall not take the time now to do it.

I assume now, Mr. President, for the purpose of the argument, that we are going to agree that the best way is to lease these lands for a limited period and not alienate them in fee, not to give grants in perpetuity of these great rights. I assume that will be the determination of the Senate, because it did just exactly that thing with reference to the navigable waters bill and all bills that have in recent years been presented to the Senate dealing with the general subject and which have received the serious consideration of any of its committees embodied the same idea. In past times Congress again and again passed acts granting the perpetual right to occupy a navigable stream with a dam for the purpose of developing power. The Keokuk Dam was constructed under such a grant, and for all time it will have the right to occupy the bed of the Mississippi River. Congress has surrendered to the original grantees of the franchise and their assigns, so far as under the Constitution it can do so, the privilege of utilizing the flow of the river at that site. So the first development in my State, the Canyon Ferry development, was made under a grant of a perpetual right. That act was passed by Congress in the year 1890. We have, however, changed our minds about that policy, and when the Shields bill was under consideration not a word was heard in support of the idea that that feature of the bill by which the rights of the permittee ceased at the end of 50 years ought to be taken out and that a provision for a grant in perpetuity should be substituted. Everybody agreed that the license ought to be for not more than 50 years, and that at the expiration of that time the right should come back to the Government and be subject to such disposition as it might then be thought wise to make. So I assume that the Senate, in whatever form the question comes before it, will reach the conclusion that a grant ought not to be in perpetuity, but for a limited period.

If that is the case, Mr. President, let me inquire next, What are the particular matters of difference in the minds of those who have considered the question concerning the lines the legislation ought to take?

I will say, Mr. President, that exactly the same cleavage is found there. Those who are really desirous that the grant should be in perpetuity want to make the terms just as light as possible to the permittee and desire that it should be just as hard as possible for the Government to take over the property at the end of the 50-year period. On the other hand, there are those who want to make the charge and conditions burdensome meanwhile, and make it relatively easy to take over the property at the end of that period.

Let me speak about that for just a few minutes. In the first place, understand the controversy hinges about these two questions: First, Shall there be a charge made during the life of the lease or shall there be no charge? Second, Should the property taken over be paid for at what is then the fair value of the property, including the unearned increment, or should the right be reserved to take it over at what it actually cost the permittee to construct it? You will understand that at the end of the 50 years, if the Government takes over the land on which the permittee has constructed his dam, it will be necessary to take over as well the power house and its site and the transmission lines. Various industries and manufacturing establishments of one kind and another, dependent upon the plant for power, must be kept supplied. If the Government should take over the leased land it leased, he can not operate his plant, and in order to supply those who are dependent upon it with power it will become necessary for the Government to take over the adjacent and dependent property in order that it or some one authorized by it may carry on the business.

Then the question arises, What should the Government pay for the property which it thus takes over? The bill provides that the "fair value" shall be paid. During the life of the lease it provides that there shall be a charge not to exceed 25 cents per horsepower per annum. I can not agree with either of those ideas.

It is said, Mr. President, that the State owns the waters of the streams and that if the Federal Government makes any charge whatever based on the energy generated it is really making a charge for the use of something that does not belong to the Government of the United States at all, and by so doing infringes upon the rights and confiscates the property of the State.

An idea seemed to prevail in the minds of some Senators that I am a champion of the view and believe that the waters in the streams flowing over the public lands belong to the Government of the United States. As I have said heretofore, I had the honor of arguing that question before one of the great tribunals of the country even before I came to the Senate, and I argued then and now believe that the waters of the streams upon the public lands belong to the States if ownership can be predicated therein either by the Government or by the States.

But here is the situation. The Government owns the land upon one side of a stream or upon both at a point therein where a power development is possible. No one can build a dam across that stream without the permission of the Government of the United States to occupy the land on either side. The Government of the United States may say to the public, "We will let anyone build a dam across there resting upon such land upon terms which we prescribe. One may build a dam across there upon condition that he pays 25 cents, 50 cents, 75 cents, a dollar, or whatever price may be fixed for each horsepower he may generate through his occupancy of our land. We are not charging for the use of the water; we are making our own terms for the occupation of Government land."

So, Mr. President, this bill is entirely consistent with the idea that the State owns the water of the stream.

Now, bear in mind that every Western State claiming to own the waters of the streams says to everyone, "Come along, it is all yours; take it wherever you find it; we will not ask you a penny for it; just take it out and turn it to some beneficial use, and you can have it without charge upon our part." But the Government of the United States is disposing of the adjacent land, and it says—at least, I should like to have it say by this bill—"You may occupy that land by paying just such a figure as the Secretary of the Interior may agree upon with you for the privilege, an annual royalty or rental, dependent upon the use you put it to, to be figured upon a basis of the power you develop and sell or utilize."

Mr. BORAH. Mr. President——

Mr. WALSH. I yield to the Senator.

Mr. BORAH. I do not think the Senator from Montana and the other western Senators, or any Senator perhaps, who has given consideration to the subject here entertains any different views with reference to the law of this matter, but does not the Senator concede that the practical effect is the same as if the United States owned the water also, because by reason of its ownership of the land and its determination not to permit anyone to occupy that land, except upon such terms as it proposes, the practical result is that it is just the same as if it owned the water?

Mr. WALSH. It works out the same way.

Mr. BORAH. It works out the same way, and therefore upon the question of law there is no difference of opinion; it is purely a question of policy upon which there is a difference of opinion.

Mr. WALSH. Certainly; it is purely a matter of policy. The disquisitions to which we have listened on the ownership of the waters in the State are all quite beside the question. There is no legal principle in the way of the enactment of this bill.

The Senator from California [Mr. WORKS] is the author of a voluminous minority report, concurred in by several Senators, adverted to by the Senator from Colorado [Mr. THOMAS] in the course of his remarks, in which he laboriously and undoubtedly conclusively demonstrates that the States own the water of the streams. The proposition is conceded. Nobody disputes it at all—at least not in this body.

Mr. BORAH. Exactly; I think it all resolves itself into a question of policy.

Mr. WALSH. Certainly; that is all there is to it.

Mr. BORAH. The very illustration the Senator gives accentuates one of the objections some of us have to this proposition; that is, that when you admit the National Government into local concerns the National Government dominates and directs and controls local matters just the same as if it had a legal right to do so. That is one of the great objections to having the National Government operate in the local field at all.

I would not differ from the Senator from Montana very much if the municipality, the county, or the State was operating instead of the National Government, but the minute you admit the National Government into the local field it dominates the entire situation as if it had the constitutional right to do so.

Mr. WALSH. I have no capacity to consider these questions except as they address themselves to me as features of a business proposition. Senators talk about the domination of one or the other government and the admission of national activities into the field of State legislation. Let us take this up as a business proposition. Here is a man in New York who has the money to invest in a power development in the State of Idaho. How is he concerned about whether the National Government dominates or the State government? He comes to the Federal Government to secure a permit, and it says, "We will lease you this land on these terms." He says, "All right; that is perfectly satisfactory to me; I will make that agreement with you." Let me inquire of the Senator why he wants to get in the way of arrangements of that kind, and how the rights or the interests of his State or of any of its people are prejudiced by it?

Mr. BORAH. I will tell the Senator precisely. I am not at all concerned about the gentleman from New York, who wants to get a lease; I am concerned about the effect and operation of this entire system upon the people who live not in New York but live in the State of Idaho, whose affairs will be dominated and controlled at a distance of 3,000 miles from their residence. That is what concerns me.

Mr. WALSH. Now, let us consider that as a practical proposition. Let us understand now how and in what way it affects the people of Idaho and of Montana, because, of course, development in one State will be utilized in both. Let us understand now what there is about this that the Senator fears for the people of Idaho. They get a power development, and they, through their public-utilities commission, regulate the price that the developing company can charge, and all there is to it, Mr. President, is that in determining the charge the commission will have to take into consideration, as a matter of course, whatever royalty the company pays to the Federal Government. What is it, I ask, that ought to induce the people of Idaho to set their faces against power development in that State under such conditions?

Mr. THOMAS. Mr. President——

Mr. WALSH. If the Senator will pardon me just one moment. Under a leasing system the annual rental or royalty must be figured as a fixed charge to be met out of revenues. If the property was bought and a title in fee acquired, a corresponding amount must be awarded as a return on the investment in the land. The Senator from California [Mr. WORKS] has proposed a substitute bill directing the sale of the power sites at the best price obtainable. Under such a system a utility commission must authorize charges which will return interest on the purchase price of the land, as under the leasing system the annual rental charge must be taken care of.

Now I yield to the Senator from Colorado.

Mr. THOMAS. I merely wish to suggest, in the event the gentleman from New York is ready to develop the water power of Idaho, provided this bill is passed, he is not placed under the jurisdiction of the Public Utility Commission of Idaho if the energy goes into Montana or Utah, but it at once passes under the domination, under this bill, of the Interstate Commerce Commission, 3,000 miles away.

Mr. WALSH. Certainly the Senator from Colorado would not have it any other way.

Mr. THOMAS. Indeed I would have it some other way.

Mr. WALSH. All right, I can not help that. We are developing power to-day at Thompson Falls and carrying it over into the State of Idaho. Of course, that is a detail of this bill. I am sorry to be diverted from the general argument. It is a detail of this bill; but what would the Senator want done in such a case? Suppose the Idaho commission fixes the charge at which the power is to be supplied in the State of Idaho at a very low price, and in the State of Montana it is fixed, upon investigation, at a higher figure, the same power company supplying both States, anyone who has a choice in the matter will go over into the State of Idaho to carry on his enterprise. In exactly the same way, if we make it lower in the State of Montana, we will get the business. So there will be warfare between the commissions in the two States. The only way controversies of that character can be settled or avoided is to have the charges regulated by Federal authority, should one project extend into two or more States. But, as I said, that is a detail of the bill.

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER (Mr. VARDAMAN in the chair). Does the Senator from Montana yield to the Senator from Utah?

Mr. WALSH. I yield.

Mr. SUTHERLAND. Let me ask the Senator if the control of the whole matter, as far as the power site and development of water is concerned, was in the hands of the State where the power site and water are situated, would that prevent the Interstate Commerce Commission from dealing with the charges for power when it was transmitted from one State into another?

Mr. WALSH. I should think not.

Mr. SUTHERLAND. The Senator would not require this particular form of bill in order to vest the Interstate Commerce Commission with that power.

Mr. WALSH. Oh, no.

Mr. SUTHERLAND. It would happen in any event.

Mr. WALSH. As I said, that is not an essential feature of this bill. That, of course, is a provision which would have to go in any bill that might attempt to deal with this subject, either through continued Government ownership or through State ownership.

Mr. SUTHERLAND. That is a matter which will pass in any event.

Mr. WALSH. Mr. President, I wish to speak about the features which have aroused all this controversy. I think there is no doubt in the mind of anybody now, after the discussion which has been had, that it is entirely within the power of the Federal Government, when it disposes of these adjacent riparian lands, to say that the permittee must pay for the use of those lands a certain amount annually, dependent upon the power it develops and utilizes from the plant, and that in so doing there is no invasion of the rights of the State or violation of the compact that is the foundation of our Federal Union.

Mr. SHAFROTH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Colorado?

Mr. WALSH. I yield.

Mr. SHAFROTH. The Senator seems to think it is conceded that that is correct. I can not concede that.

Mr. WALSH. Of course I ought to except the Senator from Colorado.

Mr. SHAFROTH. I wish to say to the Senator that the power by which these lands were obtained by the National Government was as a temporary trust to dispose of the land, and if this or any other leasing bill were to express clearly on its face that the National Government intends to hold these lands forever, the Supreme Court of the United States would declare the act unconstitutional.

Mr. WALSH. Of course, I understand the Senator contends that there is no power in the Federal Government to lease any of the public lands, but that it must sell them. That same argument was made before the Senate of the United States 80 years ago by Thomas H. Benton.

Mr. THOMAS. Such is not my contention. My contention is that it is confiscatory of property belonging to the States, and consequently the lease operates to deprive of property both the State and those within the State without due process of law.

Mr. WALSH. I understand the Senator claims that we are seizing the State's property, namely, the water, when we say we will give you this land but you must pay for it on the basis of the power you produce.

Mr. THOMAS. I concede the leasing power of the Government.

Mr. WALSH. I was referring to the Senator's colleague [Mr. SHAFROTH].

Mr. SHAFROTH. Mr. President——

The PRESIDING OFFICER. Will the Senator from Montana yield to the Senator from Colorado?

Mr. WALSH. I yield.

Mr. SHAFROTH. I will concede it for a limited period, it might be for a period of 50 years, and the Supreme Court would say that is a very short time compared to the life of a nation; but if you fix a provision in your bill that it shall remain forever the property of the United States——

Mr. WALSH. But it does not so provide.

Mr. SHAFROTH. I have no doubt it would be decided as unconstitutional by the Supreme Court.

Mr. WALSH. I am very glad we agree that the United States can lease for a period of 50 years.

Mr. SHAFROTH. I did not say that. I said the court might hold it to be constitutional. The only decision I found in relation to the matter is one which approved a lease for five years, which unquestionably would be very temporary.

Mr. WALSH. The period of the leases did not seem to enter into the consideration of the question by the Supreme Court of the United States at all. The power to lease was declared in general terms.

I was about to say that Senator Benton had made exactly the argument in the Senate of the United States to which we have at times listened here, and afterwards went over into the Supreme Court and repeated it there, but that court decided against him. The report of the case gives an abstract of his argument; and you can find it elaborated in the discussions you have listened to here on the floor of the Senate from the eminent Senator from Colorado [Mr. SHAFROTH]. I pass that point and proceed to the question of the limitation of the charge. I believe it is agreed that the Government may make a charge for the use of the land graduated upon the amount of power that is developed and used in connection with the site.

Now, the question arises as to how much of a charge should be made and how the charge should be regulated. The Senator from Utah, who, by the way, I think, is the author of most of the amendments reported to the bill by the Senate committee, insists that the provision for a maximum charge should remain as it is in the bill, at 25 cents, because that amount, he thinks, will cover the cost of administering the law, and he does not want any more charged for the use of these lands than will cover the actual cost of administration. In other words, he does not want any return whatever to the Government for the lands the use of which is granted.

Mr. SMOOT. Mr. President——

Mr. WALSH. I yield to the Senator.

Mr. SMOOT. Of course, the Senator in stating that knows that I do not believe there ought to be any charge by the Government at all.

Mr. WALSH. I do. I understood the Senator to take that position—that there should be no return whatever to the National Government.

Mr. SMOOT. I do not know whether the Senator has noticed my proposed amendment to the bill which I expect to offer at the proper time, authorizing the States in which these water powers are located to make application for the land; that the Government will still hold absolute title to the land; that the application made by the State shall be granted by the Government to the State; and then the public utilities commission of a State shall regulate not only the price which shall be charged for the power but make all necessary regulations to protect the people of the State, the consumers of the power.

Mr. POMERENE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Ohio?

Mr. WALSH. I will do so in just a moment. I have not seen the amendment proposed by the Senator from Utah, but I understand it perfectly well, for I have seen such a bill heretofore of which the Senator is the author. I understand that the Senator from Utah does not agree with this bill, but that he has one of his own.

This bill was prepared, as I have already indicated, by the heads of a number of the great committees of this and the other House in conjunction with the Secretary of the Interior, who is charged with the care of and disposition of the public lands. It was introduced in and went through the other House,

and came to the Committee on Public Lands of the Senate. In its general aspects it has received the approval of that committee. It is here before us. Of course, the Senator from Utah does not like the bill; he has his own ideas about what a bill dealing with this subject should be; but it will be for the Senate to say whether or not the bill having the history of which I speak shall get its approval or whether the ideas expressed in the bill of the Senator from Utah shall receive its approbation.

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Ohio?

Mr. WALSH. I yield.

Mr. POMERENE. Mr. President, I rose rather to ask a question of the Senator from Utah. As I understood him, he made the statement that, in his judgment, there should be no charge by the Federal Government for this water power. Is the Senator from Utah also of the opinion that the States should make no such charge?

Mr. SMOOT. No. I will say to the Senator——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Utah?

Mr. WALSH. I do.

Mr. SMOOT. I will say to the Senator, that whatever charge the public-utilities commission of each State agree upon, I think ought to be the charge for this water power. If they think that it is for the best interests of the people to allow the people of the State to use the water which belongs to the State, I favor allowing the public-utilities commission to say whether it is for the best interests of the State to charge so much per horsepower developed by the water of the State or not to do so.

Mr. POMERENE. That is, to decide whether or not the State shall receive any revenue?

Mr. SMOOT. That should be left entirely with each State.

Mr. WALSH. Mr. President, perhaps the Senator from Ohio did not hear me a little while ago, but I now advise him that under the laws of every Western State one can appropriate water, without being obliged to pay one penny for it. So the man who located a water-power site would get the water from the State without paying anything for it; and the Senator from Utah would give him the right to occupy the land without paying for it. Therefore he would not pay a dollar to either the State or to the Federal Government.

Under any system the State utilities commission has the right to regulate the prices at which a power company shall sell its power? That is quite a different question.

Mr. SMOOT. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield further?

Mr. WALSH. I yield.

Mr. SMOOT. In order that the Senator from Ohio [Mr. POMERENE] may understand just exactly the position of the Senator from Utah, I wish to state that when the State makes application for the use of the land required for the power house to develop the water system which belongs to the State, the State holds the title to the land, and either the State or the Government can impose upon the power-site people in locating the lands any rates that they may desire for the power created.

The amendment which I propose to offer as a substitute for the pending bill does not give the title to the man who erects the power house or distributes the power, but provides that it shall never go out of the possession of the State making the application. So the public-utilities commission of the State can regulate that just as it is here proposed to undertake to regulate it by charging so much per horsepower generated, and whatever charge is made goes to the State in which the power is located, and not to the Government of the United States. Not only that, but the matter will be controlled by the public-utilities commissions of the States and not by the Secretary of the Interior, as is provided in this bill.

Mr. POMERENE. Then the Senator's position is that no limitation should be placed upon the public-utilities commission whatsoever when it comes to the determination of the question as to whether or not the State should derive any revenue from this water power?

Mr. SMOOT. I think that each State ought to decide that matter for itself.

Mr. WALSH. Mr. President, I am very sorry that we have been diverted to the consideration of the amendment intended to be proposed by the Senator from Utah, instead of adhering to the bill which is now before us; but I desire to say that this matter of regulation is entirely aside from the proposition of acquiring the right in the first place. Under the proposition of the Senator from Utah the State would give the right to the use of the water free and the Government would give the use of the land free, and so the power company would not pay anything for either land or water.

So far as the regulation is concerned, we shall discuss that later; but this matter of regulation is very much misunderstood. The State has the power to regulate public utilities, but it has no power to regulate a purely private business. The trouble about this thing is that many of these power developments will never be controlled by a public utility. Suppose a man wants to build a pulp mill, and he acquires a power site in order to provide himself with power for his enterprise. He does not not sell a pound of power; he utilizes it all in the manufacture of pulp. Here is another man who wants to locate a power plant for the purpose of operating nitrate works. He does not intend to sell a pound of power; he is intending to utilize it all in his nitrate works. Your public-utilities commission can not reach him.

The Great Northern Railway owns and operates a hydroelectric power plant in the Cascade Mountains, by the aid of which it carries its trains through the great Cascade Tunnel, several miles in length. It is now looking for power sites for the development of energy with which to operate its entire road through the mountain section. It takes out those sites, it developes them, but it does not sell a pound of power to anybody. It simply utilizes the power it generates in the operation of its trains. What can a public-utility commission do in the case of power sites so developed, without a contribution of any kind either to the State or the Federal Government.

So, Mr. President, we come back to the proposition about the charge. Should there be a charge or should there not be? I think that we have arrived at that stage when the public mind demands that the Government of the United States have a return of some kind for these valuable properties, which they are willing to dispose of to those who desire to develop them. The question is, Should there be a limit? I am entirely convinced that upon reflection you will say that there should not be. There should not be, for this reason: These power sites exist in all varieties of value, in all degrees of accessibility, and at all distances from the market.

I have spoken several times about the great power site at Polson, in my State. It is on the Pend d'Oreille River. That river empties the great Flathead Lake, which is the greatest body of fresh water between the Missouri River and the Pacific Ocean—a great natural reservoir. That river tumbles over a series of cascades 7 miles in length. As I heretofore have shown upon this floor, it is capable of developing 294,000 horsepower. Mr. President, if that power site were put up for sale I feel certain there would be any number of bids for it of from two to three million dollars from people hoping to secure it. Would you let somebody go in and develop that power site and take it for merely nothing? How are you going to limit the charge? I do not know what would be a fair charge.

I can point you to other places in my State, Mr. President, in the remote mountainous sections, where a small development is possible or even a large one, but at a cost so great that it promises only a trifling yield if it can be made to pay at all. In such cases possibly the Secretary of the Interior might be permitted to say to a man: "Yes, we will give you a permit and we will not charge you anything for it for 10 years; after that we will charge you 10 cents a horsepower for the next 10 years, and possibly 25 cents for the balance of the time."

Conditions are so varied, Mr. President, that it would be the height of unwisdom in the Congress of the United States to endeavor to fix either a minimum or a maximum rate. Why can you not trust it to the Secretary of the Interior and let him fix whatever price his judgment dictates? Of course the man who desires a permit will go to him, they will discuss the matter, the Secretary will make the best bargain he can for the public, and the man who desires the power site will represent all the conditions which ought to prompt the Secretary to make the terms as reasonable as he can.

Mr. President, I desire to speak for a short time on the matter of recapture and wish it were possible to do so to a Senate with a reasonably full attendance.

Mr. ROBINSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Arkansas?

Mr. WALSH. I yield.

Mr. ROBINSON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Arkansas suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Hughes	Page	Stone
Bankhead	James	Pittman	Swanson
Brady	Johnson, S. Dak.	Pomerene	Thomas
Bryan	Jones	Ransdell	Thompson
Chamberlain	Kenyon	Reed	Tillman
Chilton	La Follette	Robinson	Vardaman
Clapp	Lane	Saulsbury	Wadsworth
Curtis	McCumber	Shafroth	Walsh
Fernald	McLean	Sheppard	Watson
Fletcher	Martine, N. J.	Sherman	Weeks
Gallinger	Norris	Smith, Ga.	Williams
Gronna	Oliver	Smith, Md.	
Hollis	Overman	Sterling	

The PRESIDING OFFICER. Fifty Senators have answered to their names. There is a quorum present.

Mr. WALSH. Mr. President, the question of the annual charge that ought to be made being disposed of, the next point over which a serious difference of opinion arises, and which occasions the greatest contention, is the amount that is to be paid for the property which the Government takes over at the expiration of the period of the lease. As I have explained to you, it must take over the works that were constructed by the permittee; and the difference of opinion arises in this way: One school insists that at the end of the period the Government, if it takes over the plant, should pay its then fair value. Another school insists that it ought not to pay its then fair value, with all the unearned increment that will arise by reason of the general development of the country, but that the money which is actually invested in the plant only ought to be returned to the investor; in other words, that he ought to have a good, reasonable, fair return upon all the money that he has invested in it during the entire period of 50 years, and then at the end of the time, if the Government takes it over, he should get his money back.

Mr. President, here is the situation: The permittee gets his privilege under the act from the United States, constructs his plant, acquires his water right under the provisions of the laws of the State, and the charges for power sold, as you have often been told, become subject to regulation all the time by the public utilities commission of the State in which the development occurs. All of his rates will be fixed upon the basis of the amount of money that he has invested in the enterprise. He is entitled to get back all of the necessary expenses of conducting the business, and then he is entitled to such a rate as will return him a reasonable profit upon the money he has invested in the plant. So it will go on for the full period of 50 years; and if, after the 50 years have expired, the Government allows him to remain in possession of the property, his rates will still be fixed on the basis of the original cost to him of the enterprise.

But we will assume now, Mr. President, that the Government concludes to take over the property and turn it over to some one else, to another and a new lessee. The Government is then called upon to pay, should this bill become the law, not only the amount which was originally invested in the plant but to pay the then fair value of it. Of course, around all of these developments industries will grow up; the entire country will have undergone a change within the period of 50 years that none of us, no matter how keen or active his imagination may be, can accurately foresee. Why, these properties, Mr. President, the power-house site, the adjacent land utilized for one purpose or another in connection with the business, the transmission line, the rights of way, and, above all, the water rights may and probably will have an enormous value after so many years. Whatever it is, under the bill as it has been rewritten by the committee, all that must be valued, and the permittee must be given the fair value of his property as it then shall be. The Government then turns it over to a new lessee at exactly what it has to pay for it. Now, Mr. President, when he starts off in his business he is entitled to a fair return upon the money that he invests, and, of course, that being more than the original cost, the rates must be higher than they were before. We had better let the man who built the plant originally continue rather than to take it from him at its "fair value" and turn it over to somebody else. The rates of the new owner are fixed upon the basis of what he has invested in the property. Fifty years pass and the Government fakes it over again, and turns it to another man at the "fair value," presumably something more than it was before. So every time the Government takes the property over the rates rise and are higher than they were during the preceding period. That is not right.

Mr. WADSWORTH. Mr. President, may I interrogate the Senator at that point?

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from New York?

Mr. WALSH. Certainly.

Mr. WADSWORTH. Is the Senator entirely certain that in the event the Government took over the plant at its fair value, as described by the Senator so correctly, and then leased it again to a second permittee the second permittee would invest any capital?

Mr. WALSH. Certainly. The idea contemplated is that the Government will take over the plant, having already arranged with a new lessee to operate it. The Government will simply give the lessee the right again to occupy these lands for a period of 50 years, and will turn over to him the acquired property at just exactly what the Government paid for it.

Mr. WADSWORTH. Well, Mr. President——

Mr. WALSH. If the Senator will pardon me, of course the Government might say, "We lease you the whole thing"; but if they leased him the entire plant, after paying for all but the dam site, they would, of course, lease at such a figure as would return the Government its just interest upon the fair value of the property which it purchased. In any case, the fair value, something more than the original investment, becomes the basis of subsequent charges.

Mr. WADSWORTH. I see the point raised by the Senator. I did not know whether or not my conception of the situation coincided with the idea of the Senator. Of course, the power house, theoretically then 50 years old, at the end of the term becomes the property of the Government when it is paid for.

Mr. WALSH. Exactly. It takes it over and pays for it.

Mr. WADSWORTH. My conception would be that if the Government wanted to re-lease the property, it would not be in the same position as it was at the beginning of the first 50-year period; that it would be not only leasing land which happened to have a power site upon it but would be leasing a complete power equipment.

Mr. WALSH. I apprehend that would not be the situation. I apprehend the Government would not take it over at all until it had already found a new lessee. I apprehend that very likely the Government would say to the new lessee, "We will give you a lease on the public land, land occupied under this act, on the payment of a royalty; you pay to the original lessee whatever shall be determined to be the fair value of the other property to be taken over." I have no doubt that is what the Government would do; but suppose that Congress should appropriate money enough to buy the property at what the court shall determine to be its fair value, then, you will observe, the Government will have to get from the lessee a return upon the money that it invests. In any case, whether the Government leases the whole thing or whether it simply leases the public land, and the lessee buys the other property at its fair value, as determined by the court, such fair value becomes the basis upon which subsequent charges are made.

Mr. SMOOT. Mr. President, I dislike to interrupt the Senator——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Utah?

Mr. WALSH. I have yielded to the Senator from New York, and I trust the Senator from Utah will pardon us until we get through with our colloquy, and then I will be glad to yield to him.

The PRESIDING OFFICER. The Senator from Montana declines to yield to the Senator from Utah.

Mr. SMOOT. I thought the Senator from New York had concluded.

Mr. WADSWORTH. Apparently, then, Mr. President, if the Senator from Montana will permit me to interject an observation, no matter how careful we may attempt to be in drafting a statute in this year 1917, we are really invading a field of conjecture as to what is going to happen 50 years hence.

Mr. WALSH. I should say so.

Mr. WADSWORTH. And the idea in my mind was that when the 50-year period had expired, and 3 years prior to the expiration of the 50-year period, if my recollection of the terms of the bill is correct, the Government has found some other lessee which at the end of the fiftieth year it decides to permit to use the property, it notifies the first permittee——

Mr. WALSH. Yes, sir.

Mr. WADSWORTH. And in its relations with the second permittee an entirely different state of affairs exists as compared with relations with the first permittee, because at the end of the 50-year period, by one method or another, the Government finds itself in possession of a completely equipped power plant with all the accessories.

Mr. WALSH. On paying for it its fair value.

Mr. WADSWORTH. After having paid for it its fair value. Then, I assume—and I hope the Senator will not think me impertinent in making this suggestion—from the conjectures of

the Senator from Montana—certainly they would be conjectures if made by me—that after that period has arrived, 50 years having gone by, from then on the Government will endeavor to charge a sufficient rental in order to earn for itself a proper rate of interest on the money expended at the end of the first 50-year period in taking over the property.

Mr. WALSH. Exactly.

Mr. WADSWORTH. Then, from that time on the Government is in the business of generating power?

Mr. WALSH. Of course, it is contemplated that the Government will not hold the property, but it will do just as it is proposed to do now, turn it over to someone else.

Mr. WADSWORTH. Simply by lease?

Mr. WALSH. Yes; the bill contemplates that.

Mr. WADSWORTH. Would the Senator be willing to give me and the Senate his idea as to what would become, in that event, of that property, so far as its being subject to taxation by the State authorities is concerned?

Mr. WALSH. If the Government retained the property and itself operated it, it would not be subject to taxation by the State authorities under the doctrine of Van Brocklin against Tennessee, to which the attention of the Senate was invited this afternoon; but if it turned the property over to a lessee, all of the property would be subject to taxation, except the lands which originally belonged to the Government, and the leasehold interest in that land would be subject to taxation. Do I make myself clear?

Mr. WADSWORTH. Is the Senator quite sure that a new lease made upon the property by the first permittee after being turned over to the Government at the end of the 50-year period and then leased by the Government, the Government never surrendering title to the improvements, would be subject to State taxation?

Mr. WALSH. The leasehold interest would be subject to taxation.

Mr. WADSWORTH. The lease itself?

Mr. WALSH. The lease would be subject to taxation; but I assumed that the Government would not hold the title to all the property. It would simply hold the title to the land which it originally owned, and the original lessee would convey to the new lessee all the other property; or, perchance, the original lessee would convey it to the Government and the Government would immediately convey it to the new lessee; so that the new lessee would own all the property that the original lessee owned, and it would all be subject to taxation, just the same as in the hands of the original lessee.

Mr. WADSWORTH. Then the second lessee, of course, would have to expend new capital in taking over the property created by the first lessee?

Mr. WALSH. That is the point I am making; and that would be a higher basis upon which rates would be fixed during the succeeding period.

Mr. SMOOT. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Utah?

Mr. WALSH. I do.

Mr. SMOOT. The bill specifically provides how the fair valuation shall be arrived at; and I call the Senator's attention to section 5. In the proviso it says:

> Such fair value shall not include or be affected by the value of any public lands, rights of way, franchises, or other property leased or granted under this act by the United States, or by the good will or prospective revenues.

Mr. WALSH. I understand that perfectly.

Mr. SMOOT. Then I did not understand the Senator when he stated that the fair valuation at the end of the 50 years would include the franchises and good will and the rights of way and the prospective revenues.

Mr. WALSH. I do not see how the Senator could have understood that. I made no such statement.

Mr. SMOOT. I understood the Senator to say that.

Mr. WALSH. No; I spoke about the power house, and I spoke about the generating plant, and I spoke about the transmission line, and about the right of way for the transmission line, and all those things, including the water rights.

Mr. SMOOT. The Senator does not mean to say that the power house is going to increase in value in 50 years, does he?

Mr. WALSH. I do not know why it should not.

Mr. SMOOT. It will decrease in value.

Mr. WALSH. Let me explain. Here is your power site. The water is diverted at the dam and can be carried for a mile away through a wood-stave pipe or through a steel pipe and dropped to the power house. That power house may be situated upon land a mile away from the land on which the dam is. It may not have been acquired from the Government at all, and while the house built upon the land can not increase in value the entire property—the house and the land—may have become enhanced enormously in value.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Iowa?

Mr. WALSH. I do.

Mr. CUMMINS. The point that seemed to me somewhat obscure with respect to that part of the bill which has just been under discussion is this:

Suppose the investment in the property at the end of 50 years was a million dollars. Suppose it was earning at that time 20 per cent upon the investment. In valuing the property would the amount of its earnings be a factor or element in determining the amount the Government should pay in taking it over?

Mr. WALSH. I rather think, under the rules applicable to eminent domain, that they would not be; that is to say, that we would not be entitled to introduce proof to show what the entire plant was producing.

Mr. CUMMINS. It seems to me that is a very important matter. I was not at all sure in reading the bill somewhat hastily whether that element in value—and it is a real element in value in the case of a private property—would be taken into account or not. We had that subject somewhat under discussion when the other water-power bill was before the Senate, as the Senator will remember. I was very solicitous then that it should be eliminated by direct expression in the bill.

Mr. WALSH. Mr. President, I answered the Senator from Iowa, having in mind the question as one strictly of a legal character. I do not believe that in the estimation of value as a legal principle you could show what the entire plant is producing. Nevertheless, as a practical proposition we all know it would enter into it; that, in the first place, the value of these things is what they will bring in the market, what a man would be willing to give for them if they were put up for sale—a man willing but not obliged to buy from a person willing to sell but not obliged to sell, as it is expressed—and as a practical proposition in arriving at that figure it would be impossible to exclude the influence of the surrounding conditions, including the success or the failure of the enterprise.

Mr. NORRIS. Mr. President——

Mr. WALSH. But, if you will pardon now, I propose, if you follow me, to get rid of all those troublesome questions by simply inserting in a simple amendment at line 19 of page 15, so that instead of reading "shall pay in a lawful warrant drawn on the Treasury of the United States, or otherwise, before taking possession the fair value of such property," it shall read, "the fair value, not to exceed the actual cost, of such property."

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Nebraska?

Mr. WALSH. I yield to the Senator from Nebraska.

Mr. NORRIS. I was interrupted, and did not hear all of the colloquy between the Senator from Montana and the Senator from Iowa; but it struck me, when the Senator was talking about the cost and the fair value, that one of the elements of value at the end of the 50-year period would be the water right that is controlled by the State. It might be acquired, and would be acquired under the laws as they now exist in the several States, for nothing; but after the business had been developed for 50 years, and a great industry had grown up, and the country had developed greatly, that water right itself would be worth millions of dollars at a fair value.

Mr. WALSH. Why, of course.

Mr. NORRIS. If the Government or a subsequent lessee were required to pay the fair value of all the rights, it would have to pay that value, which cost them nothing and which was really made by the public that patronized the institution.

Mr. WALSH. The Senator is absolutely right about that.

Mr. STONE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Missouri?

Mr. WALSH. I do.

Mr. STONE. Under the plan we are considering, the Government permits the permittee to use the land by paying a rental of a certain amount per horsepower. That is for the use of the land. Is the State forbidden, or would it be authorized, to charge that same permittee a certain amount per horsepower for the use of the water?

Mr. WALSH. It would be authorized to do so; but let me say to the Senator that none of our Western States have deemed it wise to do anything of the kind. They have said to everybody: "Come and take it, put it to a beneficial use, and we do not ask you a dollar." That is the policy of every Western State. So you need not have any fear at all that any State

is going to burden enterprise or drive capital to other States that are more liberal in their laws. We have already taken care of that.

Now let me say, Mr. President—I was discussing this matter of "fair value"—that there is another reason why we ought not to adopt that idea. I have shown you that if you adopt the idea that is expressed in the amendments tendered to this bill you merely make a stepladder of this thing, and every time you change the ownership you increase the burden that you put upon the public; and accordingly the Government never will take back the land it leases at the end of the 50 years. Mr. President, that was the very purpose with which this provision was incorporated in the bill. It originated with those who have no interest in and give no support to the idea that the property ought to come back to the Government at the end of the 50 years. They want to frame this bill in such a way as that the power site will not be taken back—in other words, that there shall be a perpetual grant.

The Senator from Utah [Mr. SMOOT] has that idea about it. He does not want this site taken back. He does not want any charge made during the continuance of the lease, and he does not want the Government to take the land back at the end of the 50 years. This provision of the bill meets his hearty concurrence.

But there is another reason, Mr. President, and an unanswerable one, in my view, why this should not be taken. Suppose you cut this provision out of the bill altogether and do not say one word about the Government taking over this property acquired in connection with the power site and necessary for its utilization. Now, the 50 years have gone by. Why, Mr. President, the people of the State can exercise the right of eminent domain and take over that property, paying for it the fair value as it then shall be. That is the law of every State.

Mr. STONE. Does the Senator mean to take over the riparian land as well?

Mr. WALSH. That belongs to the Government of the United States, and the State can not take that; but you understand that the right of the original lessee has ceased. That land belongs to the Government of the United States now. The Government can turn that land over to the new lessee, who may then appeal to the State law of eminent domain and take possession of the other property which is necessary in order to the operation of the plant; and then he must pay to the owner of that property, the original lessee, the fair value of that property.

So, Mr. President, no provision of this kind is needed in the bill. It expresses just exactly what the law would be if never a word was said about it in this bill. It is in the language of a concession, as though a valuable right were acquired by or reserved to the people, when, in fact, they would enjoy that right if the bill were entirely silent on the subject. So that from any point of view that is a radically erroneous provision in this bill; and the idea, as it seems to me, ought to receive the acceptance of everybody; that when the lessee is permitted to make a fair return on his investment during the period of 50 years he ought then to get back the money that he paid into it and quit if the Government does not desire that he shall occupy longer.

Mr. President, if we can solve whatever difficulties inhere in the two features of the bill adverted to there will be no difficulty whatever in reaching a satisfactory conclusion concerning the mere details of this bill. The whole controversy hinges upon those two questions—the charge that is to be made during the life of the lease and the basis upon which the property is to be recaptured at the end of the 50-year period.

Now, I want to say just a few words in relation to the attitude taken by the Senator from Colorado [Mr. THOMAS] and to state to the Senate his position in relation to this matter as I understand it; and I want to do so with complete fairness to him.

The Senator from Colorado joined with the Senator from Arizona [Mr. SMITH] in recommending against this bill, urging that the proper solution of this problem is to turn these water-power sites over to the States by a simple act somewhat as follows:

All of the power sites upon the public domain are hereby granted to the States, respectively, in which they are situate.

Mr. THOMAS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Colorado?

Mr. WALSH. I do.

Mr. THOMAS. And all other lands within their borders.

Mr. WALSH. You can all understand that that introduces a change in our policy concerning the public lands that has been adhered to since the beginning of our Government. Why, Mr. President, away back in Jackson's administration it was argued upon the floor of the Senate that the proper disposition to make of the public lands was to turn them over to the States. The matter was thrashed out. All the great minds of that day having seats in this body, whose fame has added so much luster to its history, addressed their talents to the discussion of that question, and it was rejected; and there is no more sentiment in this country to-day, Mr. President, in favor of that idea than there was in those times.

Mr. SHIELDS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Tennessee?

Mr. WALSH. I do.

Mr. SHIELDS. The Senator is mistaken in his history as to the action of the General Government with relation to the States. In the case of a number of States the General Government ceded all of its lands to the respective States. I know it did so in my own State. Very early after North Carolina ceded to the General Government the territory now composing the State of Tennessee, and after the establishment of the State, the General Government ceded all the lands within that State to the State of Tennessee; and the same thing was done in the case of other States.

Mr. WALSH. Mr. President, the statement of the Senator from Tennessee is not in the nature of a correction. I was not unaware that in the case of a number of individual States general grants had been made such as those referred to by the Senator from Tennessee. In the case of all of the States specific grants of land for various purposes have been made. That is not what I am talking about. I am talking about a general act under which all the public lands everywhere were granted to the States within which they lie.

Mr. SHIELDS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana further yield to the Senator from Tennessee?

Mr. WALSH. I do.

Mr. SHIELDS. That was the character of act I was speaking of. It was a general act in my State granting all the lands within the boundaries of the State.

Mr. WALSH. The Senator does not understand me. I appreciate that perfectly. That is not quite the character of measure to which I refer. I was talking about an act under which not all lands in the State of Tennessee were granted to the State of Tennessee, but one under which lands anywhere in the United States would be granted to the States in which they lie. I say that 80 years ago that question was debated upon the floor of the Senate, and it was rejected by the Congress of the United States at that time, and it has no more countenance in the public mind to-day than it had then. So that while it might be a wise thing the sentiment of the country is so decidedly against the idea that the suggestion is not to be harbored as offering any solution whatever of the problem before us. To advance it is to argue for the indefinite continuance of the present situation of affairs. As I told you, these power sites have all been tied up for 10 years; and the proposition of the Senator from Colorado is to let them remain tied up for 10 years more—yea, for 50 years more.

Mr. JOHNSON of South Dakota. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from South Dakota?

Mr. WALSH. I shall be glad to yield.

Mr. JOHNSON of South Dakota. For the purpose of simplifying the question of property rights, could not that be eliminated by allowing the company that owned the property to retain the property, if they saw fit, at a higher price than others would give, and then permitting them to re-lease from the Government?

Mr. WALSH. Undoubtedly. The Senator from South Dakota will understand that at the end of the 50-year period there is no prohibition against leasing again to the individual who had the original lease. If he has conducted his business in a satisfactory way and if he offers as good terms as anyone else offers, in all reasonable probability the Government will let him remain in possession and give him a lease for a further period. The idea is to let our grandchildren handle that thing when they have to, 50 years from now.

Mr. JOHNSON of South Dakota. I thought, from questions that have been raised, that the question of the value of the property at that time entered largely into it.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Iowa?

Mr. WALSH. I do.

Mr. CUMMINS. I desire to call to the attention of the Senator from Montana our policy with regard to the public lands in one aspect that seems to me to be a little in conflict with his general statement, which is technically true.

We have granted, either to the States or to public-improvement companies, lands in all the western States infinitely greater in extent than the power sites. The General Government granted to my own State and to railway companies constructing lines through the State enough land to constitute an empire. Why is not the grant to the States for the purpose of developing the water-power sites exactly like the grant of lands to aid in the construction of railways or any other public utility of that character?

In my State, in addition to the railway grant, the Government granted a very large area of land—and that is true of other States as well—under what is known as the swamp act of 1850, all for the purpose of building up the State and aiding in its development. Now, why can not precisely the same thing be done with regard to water-power sites?

Mr. WALSH. Mr. President, the conditions are practically the same, as the Senator from Iowa suggests. But the trouble about the matter is that the country has had so unfortunate an experience in connection with these grants that have been made to the States that I very much fear that it does not care to persist in that policy, which was discarded quite a good many years ago. We grant lands to the States now for educational purposes, and for similar and related purposes, but we have quit granting lands to the States to aid in public improvements. I think the experience of the State of Iowa in that regard has not been particularly satisfactory to the people of that State.

Mr. CUMMINS. Undoubtedly the grant may have been too extensive, but no one has ever quarreled with its purpose. I do not think you could find any one who would question the wisdom of the aid extended by the General Government in the construction of railways. At least, I never heard it questioned.

Mr. WALSH. Of course the Nation granted the lands to the State, and the State immediately granted the lands to the railroad company for the purpose of constructing the railroad. In other instances, as you will recall, the Government made the grant directly to the railroads. The system of thus aiding in the construction of railroads by great grants of land has been the subject of the most severe condemnation in our times, brought about, I think, rather because the thing is viewed from the standpoint of the present day than from the standpoint of the day when those grants were made. But I fear very much that the country would feel that that policy had been tried and had been found wanting; so I should rather feel that that was not a solution that would avail us very much at the present time.

I was discussing the attitude taken by the Senator from Colorado [Mr. THOMAS] with respect to this matter, and explaining to you that his policy was not to pass any legislation at all dealing with this subject except a general act turning over these lands—and all public lands, for that matter, as he corrected me—to the State. He says further, however, that it is not necessary to have any legislation at all about this matter; that the State now has the right to take these lands and devote them to water-power purposes through the exercise of the right of eminent domain. He concedes that the right of eminent domain can not ordinarily be exercised except by bringing the owner of the land into court, and that there are no means by which the Government can be brought into court at the suit of the State or anyone representing the State in an action in eminent domain; but he says that if the corporation having the right to exercise the power of eminent domain gets into possession of the property, gets into possession of one of these power sites, it can not be put out, if it offers to pay the fair value of the property; and he cites the well-known authorities applying the principle of equity to lands occupied by railroad corporations either with or without the consent of the owner.

Now, let us see what the practical effect of that theory will be. Corporations organized under the laws of the State of Colorado, enjoying the right of eminent domain, may, if the view of the eminent Senator from that State is the law, go out upon the public domain and grab a power site anywhere, occupy it in defiance of the National Government, being required only to pay what may be determined to be its value at the time of the taking. Mr. President, some declarations may be found in the reports here and there, beyond a doubt, to the effect that the right of eminent domain may be exercised by a State over the public lands. The Senator called your attention to quite a number of them, most of which are reviewed by the Supreme Court of the United States in the case of Van Brockman against Tennessee, referred to by the Senator from Idaho [Mr. BORAH]. It will be found, as I think, upon reading that opinion that the Supreme Court of the United States gives no countenance whatever to the idea that a State may appropriate public lands of the United States under the right of eminent domain, and for the very plain and simple reason that the Constitution of the United States provides that Congress shall have the power "to dispose of and make all needful rules and regulations concerning the territory and other property of the United States," thus excluding any power on the part of the State to interfere with these lands at all or to attempt to dispose of them.

But, Mr. President, suppose that is not correct. Of what consequence is it that there is such a right as that? One can not raise a dollar to put into power development upon any such theory as that. It was argued by certain eminent gentlemen from the State of Colorado before the Supreme Court of the United States some six weeks ago. Suppose it is right. No one has ever been found who is willing to invest any money upon any such proposition. There is not a dollar for investment in the State of Colorado or anywhere else upon the opinion of any lawyer that the State may thus exercise the right of eminent domain. So whatever merit there may be in that view as a legal proposition it offered no practical solution of the problem before us.

Mr. President, I had not intended to talk about this matter anywhere nearly so long as I have spoken of it. I hope, however, I have given some enlightenment to the Senate upon the general aspects of the bill and directed its attention to the salient features of the measure in a helpful way. I merely want to say, in conclusion, that I am very much more concerned about the enactment of some legislation by Congress upon this subject, upon the passage by this Senate of some bill that will go over to the House and be dealt with by some conference committee, than I am about a bill which conforms to my own notions as to what it ought to be. It does seem to me there ought to be statesmanship and wisdom enough in the Senate to pass some bill representing its ideas in respect to water-power legislation. Now is the opportunity to do that, and I am going to ask those who have followed the discussion with any interest whatever to join with me in putting through the best possible bill that we can, but putting through some kind of a bill.

Mr. SHAFROTH. Before the Senator takes his seat——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Colorado?

Mr. WALSH. I do.

Mr. SHAFROTH. The Senator has intimated that a leasehold estate might be the subject of taxation. If that were true, under a bill which restricts and limits the money that can be derived from it, either through the public utilities commission of a State or through any regulation that is made by the Interior Department, what would a leasehold estate ever be worth?

Mr. WALSH. It would be worth just exactly what any other franchise is worth.

Mr. SHAFROTH. I will ask the Senator further, whether he knows of an instance in his own State where a leasehold estate has ever been taxed?

Mr. WALSH. Of course I do.

Mr. SHAFROTH. I must say that I have never known of one in the State of Colorado. I leased a piece of property for 99 years. I subleased it for 20 years. The tax for the entire property is paid. The tax for the real estate and the house on it is paid, and consequently everything else is merged in that.

Under the law of some States it might be the subject of taxation, but even if it were the subject of taxation it seems to me that when you curb and limit the amount of money which can be realized from an investment of that kind you must of necessity make your leasehold worth nothing. It seems to me, therefore, it can not be the subject of taxation.

Mr. WALSH. Railroad property is in exactly the same situation.

Mr. SHAFROTH. Does the Senator mean to say that where a railroad leases its road to another company to operate the lease is subject to taxation.

Mr. WALSH. Certainly.

Mr. SHAFROTH. I have never heard of an instance like that.

Mr. WALSH. That is the situation we are now in with the Northern Pacific. It occupies the public land with its railroad; it simply has a right of way over it; and that right of way is subject to taxation.

Mr. SHAFROTH. I have not any doubt that the right of way is subject to taxation, but that is not a leasehold estate. That is one of the properties which is owned by the company. We have several companies in the State of Colorado which have absolutely leased their railroads, and the lessees operate the railroads. I have never heard of anything but a tax on the roadbed and the rails and whatever the other property is worth, but never upon the pure leasehold itself.

Mr. WALSH. Of course, simply because it is an easier way to tax it, but if the Government of the United States owned the right of way and leased it there would not be any objection to taxing the leasehold.

Mr. SHAFROTH. Here is the difference between them: The United States Government owning this land is supposed to receive such benefit as that the land is exempt from taxation. If it is exempt from taxation, it is the same as if it paid for the entire value of the plant. There are some other benefits that are supposed to take its place. If the United States Government paid taxes on one of these power plants and leased it, can it be possible that the lessee would have to pay on that lease also? There is no such law in my State, and I do not believe it can be done.

Mr. STONE. I should like to ask——

The PRESIDING OFFICER. Does the Senator from Montana yield the floor?

Mr. WALSH. I yield the floor.

Mr. NORRIS. Mr. President——

Mr. STONE. The Senator from Colorado has the floor.

The PRESIDING OFFICER. The Senator from Colorado has been recognized.

Mr. SHAFROTH. I did not want to take the floor at this time. Let the Senator from Missouri go ahead.

Mr. STONE. I did not mean to take it, except to ask——

Mr. NORRIS. I should like to take it, if no one else wants it.

The PRESIDING OFFICER. Does the Senator from Colorado yield the floor?

Mr. SHAFROTH. I do not. I yield to the Senator from Missouri.

Mr. STONE. Mr. President, I desire to address a suggestion to the Senator from Colorado with respect to the argument he is just making, which is, as I understand him, to the effect that a leasehold is not the subject of taxation. The Senator from Montana referred to railroads as being in a situation like that which would arise from these water-power sites.

Mr. President, it is true, undoubtedly, as a general proposition that railroads are taxed on their roadbeds, cars, locomotives, and so on. They are often taxed, I think usually so, on their franchises; at least, they are in many States; they are in my State. But suppose a company should be organized to lease a railroad and under the contract it would turn out in the course of time that the rental was very low as compared with the value of the lease—in other words, that the lessees developed a very profitable business under their lease, where they would if a buyer came demand a price far in excess of what they were paying—does the Senator hold that a State could not levy a tax upon the value of that lease?

Mr. SHAFROTH. I am not contending that. I am raising the query as to whether the railroad company itself that owns the road must not pay all the taxes. I have never heard of any instance to the contrary, where there was an additional assessment made upon the lessee, whose duty it is not to pay the taxes. There is a very strong reason presented by the Senator from Missouri for the position he takes, and it is possible that that might be the law, although I do not think that it has been so decided, at least not that I have ever heard of in my State.

But, Mr. President, when you consider that this is all hedged in by the fact that there shall be a utility commission that will not permit the company to earn any more than a reasonable rate, the leasehold would be absolutely of no value. Consequently, even if there was a liability, as the Senator suggests, there would not be a liability in a case of this kind for the payment of taxes, because the leasehold is made by the very act itself, so that it can not become valuable. If you limit the amount of money that can be charged by these companies, so that they can not, for instance, make more than 6 per cent per annum, what value is there in a leasehold estate? It is so tied down by the very conditions of the act itself that it is impossible to have a value.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Will the Senator from Colorado yield to the Senator from Montana?

Mr. SHAFROTH. I yield.

Mr. WALSH. The Senator understands, I suppose, that when the commission comes to fix a rate, it must first allow all expenses, taxes, and everything else, and then it must allow a fair return on the money invested besides.

Mr. SHAFROTH. That may be, but the difficulty about that is that what they have got as an initial investment, being curbed and limited by the utilities commission itself, it would be impossible for it ever to be worth anything of substantial value over and above the cost of the enterprise in the first instance. The very object in having utility commissions is for the purpose of restraining the levy unjustly made upon the people; and that, of course, may affect its earning capacity, and it must of necessity affect the value of any leasehold estate, even if the leasehold estate were taxable. On that account, it seems to me, that you can not have any substantial value the subject of taxation.

Mr. NORRIS rose.

Mr. SHAFROTH. Does the Senator from Nebraska desire to interrupt me?

Mr. NORRIS. No; I want to get the floor for just a moment when the Senator is through.

Mr. SHAFROTH. I should like to retain the floor if we are going to continue this afternoon.

Mr. NORRIS. I understand we are not going to continue. I understand that the Senator from Missouri is only waiting for an opportunity to make a motion to go into executive session. I am not going to try to prevent the Senator from making an argument. I want to have an amendment read.

Mr. SHAFROTH. Very well; that is perfectly satisfactory.

The PRESIDING OFFICER. The Senator from Nebraska asks permission to submit an amendment to the bill.

Mr. STONE. That there may be no misunderstanding, I really am not sitting here waiting to move an executive session if it is the pleasure of the Senator from Colorado or of the Senate to keep on with the bill.

Mr. NORRIS. I wish to offer an amendment to the bill, that I ask may be printed. I ask unanimous consent that it may be read.

The PRESIDING OFFICER. If there is no objection, the Secretary will read the amendment.

The SECRETARY. After the semicolon following the word "eleven," line 20, page 13, insert the following proviso:

After the semicolon, following the word "eleven" on line 20, page 13, insert the following:

"*Provided*, That in granting leases under this act the Secretary of the Interior shall give preference to application for leases for development of electrical power by States, counties, municipalities, and irrigation districts, and in all such leases no rent or fee of any kind shall be charged. In lieu of such leases to any State, county, or municipality, or at any time after the making of the same, the Secretary of the Interior on demand therefor from the proper authority shall execute to any State, county, or municipality a patent for the property so leased or authorized to be leased by the provisions of this act. Such patent shall contain a stipulation providing that if the said grantee shall sell, lease, or mortgage the property so conveyed, or if the said grantee shall not proceed with reasonable diligence to properly improve the same for the development of hydroelectric power, or in case any dam or other structure on such property necessary for the production of hydroelectric power be destroyed, and the said grantee shall not with reasonable diligence proceed to rebuild the same, then the said conveyance shall be void, and the said property, together with all improvements, if any, thereon, shall revert to the United States."

The PRESIDING OFFICER. The amendment will be printed.

Mr. STONE. I will ask the Senator from Colorado if he desires to proceed?

Mr. SHAFROTH. I would rather postpone my remarks until to-morrow. I will state that I do not expect to try to call up the Porto Rican government bill to-morrow.

Mr. WALSH. Perhaps we can agree upon a recess until to-morrow.

Mr. SHAFROTH. As far as I am concerned, I have no objection to a recess.

The PRESIDING OFFICER. What is the pleasure of the Senate?

EXECUTIVE SESSION.

Mr. STONE. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened.

RECESS.

Mr. MYERS. I move that the Senate take a recess until to-morrow at 12 o'clock noon.

The motion was agreed to; and (at 5 o'clock and 17 minutes p. m.) the Senate took a recess until to-morrow, Tuesday, January 16, 1917, at 12 o'clock meridian.

CONFIRMATIONS.

Executive nominations confirmed by the Senate January 15, 1917.

APPOINTMENTS IN THE ARMY.

GENERAL OFFICER.

Col. Joseph E. Kuhn to be brigadier general.

INSPECTOR GENERAL'S DEPARTMENT.

Col. John L. Chamberlain to be inspector general, with the rank of brigadier general.

CHAPLAIN.

Rev. Julius Joseph Babst to be chaplain with the rank of first lieutenant.

APPOINTMENT, BY TRANSFER, IN THE ARMY.

First Lieut. Oliver A. Dickinson to be first lieutenant in the Field Artillery Arm.

POSTMASTERS.

ALABAMA.

James R. Horton, Altoona.
Annie M. Stevenson, Notasulga.

ILLINOIS.

Frank H. Conroy, Easton.
Walter Roy Donohoo, Pearl.
Winfield B. Jordan, Pana.
Claudius U. Stone, Peoria.

MINNESOTA.

John A. Estlund, Kennedy.
Robert B. Forrest, Lake Wilson.
Frank H. Griffin, Good Thunder.
Fred E. Joslyn, Mantorville.
Martin McGuire, Claremont.
William E. Murphy, Holdingford.
Charles A. Stewart, Howard Lake.

NEW YORK.

Dennis Dillon, Raquette Lake.
Ross N. Hudson, Sanborn.
Clarence A. Lockwood, Schroon Lake.
Herbert O'Hara, Haines Falls.
Frank B. Peck, Big Moose.

SOUTH DAKOTA.

Rowland F. Cadwell, Bruce.
John H. Parrott, Pierpont.
James D. Snow, Midland.

WEST VIRGINIA.

Henry M. Walker, Madison.

HOUSE OF REPRESENTATIVES.

MONDAY, *January 15, 1917.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

By the marvelous disclosures Thou hast made of Thyself, O God, our Father, in the vast and stupendous universe which environs us, and in its wonderful adaptation of means to ends everywhere apparent; by Thy potent influence working in and through the hearts of men; by the love poured out on the Cross of Calvary for a dispairing world; by the mercy displayed in His last expiring breath, "Father, forgive them, for they know not what they do"; by the universal faith which has come down to us out of the past; by the hopes of yon bright heaven; help us, we pray Thee, with clear vision and dauntless courage with firm and steadfast steps to pursue the right as it is given us to see the right.

"Not enjoyment and not sorrow
Is our destined end or way;
But to act that each to-morrow
Find us farther than to-day."

"And when the tongue is eloquent no more, the soul shall speak in tears of gratitude." Amen.

The Journal of the proceedings of Saturday, January 13, 1917, was read and approved.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Waldorf, its enrolling clerk, announced that the Senate had passed bill of the following title, in which the concurrence of the House of Representatives was requested:

S. 7742. An act placing Joseph Beale on the retired list of the Navy.

SENATE BILLS REFERRED.

Under clause 2 of Rule XXIV, Senate bills of the following titles were taken from the Speaker's table and referred to their appropriate committees, as indicated below:

S. 7742. An act placing Joseph Beale on the retired list of the Navy; to the Committee on Naval Affairs.

S. 4429. An act to amend the postal laws; to the Committee on the Post Office and Post Roads.

S. 4586. An act to protect and conserve the halibut fisheries of the Pacific Ocean, to establish closed seasons in halibut fishing in certain waters thereof, and to restrict the landing of halibut in the United States of America and the Territory of Alaska during the closed seasons established; to the Committee on the Merchant Marine and Fisheries.

EXTRA COPIES OF THE VOCATIONAL EDUCATION BILL.

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that 1,000 copies of the vocational education bill as it passed the House be printed.

The SPEAKER. The gentleman from Georgia asks for the printing of a thousand additional copies of the vocational education bill as it passed the House. Is there objection?

Mr. BARNHART. Reserving the right to object, I will ask the chairman how these copies are to be distributed—through the document room or through the folding room?

The SPEAKER. The Chair does not know. Probably they will go through the folding room.

Mr. MANN. Well, there is no object in having a thousand copies go through the folding room. I do not think the gentleman wants to do that. That would be nonsense.

Mr. BARNHART. Mr. Speaker, I doubt the propriety of printing only a thousand copies of this bill if there is any considerable demand for it. I shall probably have some demands, but if a thousand copies are printed, and they go to the document room, the chairman of the committee will probably go and get them, and the balance of us will not have any. I think the proper way for these chairmen of committees is to introduce proper resolutions and ask for a reasonable number, and let those resolutions come before the committee and have them properly considered. If there is a demand for these documents, it will be granted.

Mr. MANN. If the chairman of the committee has requests, I do not see any reason why the committee should not have a thousand copies if they want them. They are the ones who get the requests in the main.

Mr. HUGHES. I will say, Mr. Speaker, that there have been a great many requests for copies of this bill. I made my request as economical as possible.

Mr. BARNHART. If the gentleman will change his request from copies of the bill and make it a document, putting it in document form, he can have many times the number he would have in reproduction of the bill. It is a request for the reprinting of a bill. It should be in document form.

Mr. HUGHES. I am willing to accept the gentleman's suggestion.

Mr. MANN. I suppose that a good many of the people who want this bill want it for the purpose of making suggestions in regard to its terms, it having gone to conference. Those suggestions are almost valueless if made on a House document print, because the paging and the lining do not correspond with those of the copy that will be before the conferees.

Mr. DAVIS of Texas rose.

The SPEAKER. For what purpose does the gentleman from Texas rise?

Mr. DAVIS of Texas. I wanted to say in the discussion of this matter that I have a number of applications from professors of colleges and institutions in Texas for copies of the bill that has passed, together with the hearings and such speeches on both sides as may be valuable.

The SPEAKER. What is the request of the gentleman from Georgia?

Mr. HUGHES. The request of the committee, Mr. Speaker, is that 1,000 additional copies of the vocational education bill be printed.

The SPEAKER. The gentleman from Georgia asks unanimous consent that a thousand extra copies of the bill on vocational education be printed as it passed the House.

Mr. TOWNER. Mr. Speaker, I would suggest to the chairman that he make his request for 2,000 copies. Members have told me—Members who are not even members of the committee—that they have had requests for 100 copies of this bill. It occurs to me that even 2,000 copies would be a small number to answer the demands already made for copies.

Mr. BORLAND rose.

The SPEAKER. For what purpose does the gentleman from Missouri rise?

Mr. BORLAND. I rise to object. I want to suggest to the gentleman from Iowa [Mr. TOWNER] and the chairman of the Committee on Printing [Mr. BARNHART] that this number is only of value in conference. It is not a law. It is probable that a great many of these requests that are referred to by Members are merely requests for the bill as finally passed. What the chairman of the committee aims to secure is an extra number of copies of the bill as it is in progress through the two Houses, doubtless for the purpose of answering requests of the people

who are interested in the amending and perfecting of the bill. Now, we are not going to save any printing if we enlarge the request of the chairman of the committee. We may find that we are engaging in a task that is more or less unnecessary; but when the bill has finally become a law, then the interest of educators will be aroused in it, and we may at that time be compelled to print it in document form.

Mr. BARNHART. If the gentleman from Georgia will withdraw his request, I think we can arrange for a number that will be satisfactory to him without action by the House.

Mr. DYER. Mr. Speaker, I would like to ask the chairman of the committee how the disposal of these copies is to be made? Are they to go to the document room and be taken by anybody, regardless of how many copies others may want?

Mr. BARNHART. My idea is that the document room has the authority already to order an additional number of copies of a bill each day, a few from time to time, as it may be indicated that actual wants require, and they will have them there for distribution.

Mr. DYER. I understand; but if only a thousand copies are printed and they are not to be apportioned, a few Members will get all of them, because there are requests here, I assume, for as many as 10,000 copies, at least, of the bill now.

Mr. BARNHART. I understand; but I will say to the gentleman from Missouri that the purpose is merely to send it out to the "topnotchers," so to speak, who are very much interested in the bill in the course of its consideration. But many of these requests that are coming in are for the completed bill as finally enacted. These few copies are asked for now only to supply the needs of those who are interested in the changes that have been made in the bill, so that they may make suggestions to the Senate.

Mr. DYER. I understand that; but some Members will get two or three hundred copies or more and send them to all the schools in their districts, and those of us who have special calls, as indicated by the gentleman, will not be able to get copies. I think they ought to be divided up in some way so that we will be sure of getting at least a few copies.

Mr. BARNHART. The purpose as expressed was that the chairman of the committee should go and get them and that those who want them should make their applications to him.

The SPEAKER. No such request as that has been submitted to the Chair.

Mr. BARNHART. I know that, but the request has been withdrawn anyhow.

The SPEAKER. Has the gentleman from Georgia [Mr. HUGHES] withdrawn his request?

Mr. HUGHES. I have not.

The SPEAKER. The request is that 1,000 additional copies of this vocational education bill be printed, to be disposed of through the folding room.

Mr. MANN. No; not through the folding room.

Mr. HUGHES. Through the document room.

The SPEAKER. Through the document room. Is there objection?

There was no objection.

SWEARING IN OF A MEMBER.

Mr. ADAMSON. Mr. Speaker, I ask unanimous consent that the oath of office be administered to Hon. TINSLEY WHITE RUCKER, elected to succeed our late lamented colleague, Mr. TRIBBLE, from the eighth congressional district of Georgia. His credentials have not arrived, but there is no question as to his election. He is present and desires to take the oath of office.

The SPEAKER. Is there objection?

There was no objection.

Mr. RUCKER of Georgia appeared at the bar of the House and took the oath of office prescribed by law.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. MCARTHUR, for to-day, on account of important business.

LEAVE TO WITHDRAW PAPERS.

Mr. COX, by unanimous consent, obtained leave to withdraw from the files of the House the papers in the case of H. R. 20569, Sixty-third Congress, third session, without leaving copies, no adverse report having been made thereon.

UNITED STATES SECTION OF INTERNATIONAL HIGH COMMISSION.

Mr. FLOOD. Mr. Speaker, I ask unanimous consent that there be a reprint of House document 1788, Sixty-fourth Congress, second session. I would like to have 5,000 copies printed. It is the report of the United States section of the International High Commission on the work accomplished at its meeting at Buenos Aires. It is requested in the following letter from the Secretary of the Treasury:

TREASURY DEPARTMENT,
Washington, January 3, 1917.

Hon. HENRY D. FLOOD,
House of Representatives, Washington, D. C.

MY DEAR MR. FLOOD: May I suggest that you move that there be a reprint of House Document No. 1788, Sixty-fourth Congress, second session, and that an edition of 5,000 copies be struck off? This is the report of the United States section of the International High Commission on the work accomplished at the meeting at Buenos Aires and since the close of that meeting. A very limited edition has been published, and inasmuch as we already have a very considerable demand for copies it is desirable that a fairly large edition be published forthwith. Furthermore, the probability of a second Pan American financial conference will cause an increasing demand for this report.

I shall greatly appreciate it if you will take the appropriate steps in connection with this matter at your earliest convenience.

Faithfully yours,

W. G. MCADOO, *Secretary.*

The SPEAKER. The gentleman from Virginia asks unanimous consent that there be a reprint of House Document No. 1788 of 5,000 copies. Is there objection?

Mr. BARNHART. Mr. Speaker, reserving the right to object, my recollection is that this high commission was given an appropriation of $40,000 to make this investigation and print report of the same. It seems to me that is a sufficient allowance. Furthermore, the letter of the Secretary of the Treasury demands of the Congress that this action be taken forthwith. This is unusual and mandatory extraordinary. There is a regular course of procedure in complying with requests like this. It is to introduce a resolution and let it go to the Committee on Printing so that committee may investigate the need and cost thereof and report to the House, so you may consider as to whether we shall take from our own allotment for printing enough money to pay for this request of the Treasury Department, for which it has a printing allotment, and therefore I object.

ENROLLED BILLS SIGNED.

The SPEAKER announced his signature to enrolled bills of the following titles:

S. 7536. An act authorizing the Western New York & Pennsylvania Railway Co. to reconstruct, maintain, and operate a bridge across the Allegheny River, in the borough of Warren and township of Pleasant, Warren County, Pa.; and

S. 7538. An act authorizing the Western New York & Pennsylvania Railway Co. to reconstruct, maintain, and operate a bridge across the Allegheny River, in Glade and Kinzua Townships, Warren County, Pa.

PUBLIC EXPENDITURES.

Mr. BORLAND. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the subject of public expenditures.

The SPEAKER. The gentleman from Missouri asks unanimous consent to extend his remarks in the RECORD on the subject of public expenditures.

Mr. MANN. We would much rather hear the gentleman talk.

The SPEAKER. Is there objection?

There was no objection.

THE CHAPLAIN.

Mr. BYRNS of Tennessee. Mr. Speaker, I hold in my hand a short editorial which appeared in the Evening Journal, a paper published in Richmond, Va., last Saturday, and which commends our worthy and beloved Chaplain, Dr. Couden. I am quite sure it expresses the sentiment of all Members of this House on both sides of the Chamber, and I ask unanimous consent to insert it in the RECORD.

The SPEAKER. The gentleman asks unanimous consent to extend his remarks by printing an editorial from the Richmond Evening Journal. Is there objection?

There was no objection.

The editorial is as follows:

BLIND CHAPLAIN'S DAILY OBLATION.

Not the least valuable in the storehouse of treasures yielded by the CONGRESSIONAL RECORD is the daily invocation by the House Chaplain, Rev. Henry N. Couden, who for more than 20 years has served in that capacity. No visitor to the National Capital happening into the House at the opening of the daily session can fail to be impressed by the venerable figure, whose sightless eyes visualize the Almighty as readily as the man in complete possession of the seeing faculty. For many years we have followed the gems of literary thought compressed in Dr. Couden's daily prayer. Each supplication is a marvel of condensation, an epitome of man's spiritual longings, so lofty in theme, so fervent in spirit, so reflective of true devotion that even the most pronounced skeptic in the House must be impressed and for the moment uplifted. We make no apology for reproducing on this page, so long as Congress remains in session, the blind Chaplain's offerings. Wholly aside from the spiritual qualities contained, the literary construction of each is such that the prayer would adorn any editorial page in the country. We could wish that more extended publicity were given these inspiring oblations. So far as we know the Evening Journal is the only news-

paper in the country making a practice of featuring the House Chaplain's daily intercessions, but we hope their setting forth in the manner shown will suggest itself to other editors as not unworthy of emulation. No matter to what religious denomination a reader may belong, the devotional beauties contained in the daily prayer may be assimilated with the complete approbation of conscience. Even the agnostic, if a lover of good English, can appreciate the concrete expressions, the choice of words, the multum in parvo of these wonderful petitions to Divine Grace. Read them if by chance you have overlooked their eurythmic charm.

POWERS OF COMMITTEE ON RULES UNDER HOUSE RESOLUTION 446.

Mr. GARRETT. Mr. Speaker, I ask unanimous consent to proceed for a minute or two, at the end of which I wish to offer a resolution.

The SPEAKER. The gentleman from Tennessee asks unanimous consent to proceed for two minutes. Is there objection?

There was no objection.

Mr. GARRETT. Mr. Speaker, a doubt arose in the minds of some members of the Committee on Rules as to its legal authority in the matter of compelling answers of contumacious witnesses under the investigation which it has been instructed by the House to pursue, and the gentleman from Kansas [Mr. CAMPBELL] informed the Committee on Rules that he would present, and he has presented, a resolution which provides for the appointment of a select committee of five Members to make certain investigations. That is the individual action of Mr. CAMPBELL. It is not the action of the Committee on Rules. But in behalf of the Committee on Rules I present the following resolution, and I ask unanimous consent for its present consideration.

Mr. JOHNSON of Kentucky. Mr. Speaker, reserving the right to object, I wish to address a parliamentary inquiry as to whether this will interfere with the regular order of business?

The SPEAKER. Not at all.

Mr. JOHNSON of Kentucky. Then I do not object.

Mr. GARRETT. Now, Mr. Speaker, I offer the following resolution.

The SPEAKER. The gentleman from Tennessee offers a resolution and asks unanimous consent for its present consideration. The Clerk will report the resolution.

The Clerk read as follows:

House resolution 448.

Resolved, That in the performance of the duties imposed upon it by reference to it of House resolution 446 the Committee on Rules shall have the power to send for persons and papers and to administer oaths and to employ such stenographic and clerical assistance as may be necessary. The expenses incurred hereunder shall be paid out of the contingent fund of the House of Representatives on vouchers ordered by this committee and signed by the chairman thereof and approved by the Committee on Accounts, evidenced by the signature of the chairman thereof.

The SPEAKER. Is there objection?

There was no objection.

The resolution was agreed to.

Mr. GARRETT. Mr. Speaker, I offer another resolution, and ask unanimous consent for its present consideration.

The SPEAKER. The gentleman from Tennessee offers another resolution and asks unanimous consent for its present consideration. The Clerk will report.

The Clerk read as follows:

House resolution 447.

Resolved, That in the consideration of House resolution No. 446, committed to the Committee on Rules, said committee be, and it is hereby, authorized and empowered to require witnesses to answer all questions propounded by said committee, or a member thereof, touching the subject matter of said resolution, and to require any witness called before it to testify fully as to any information in his possession, whether in the nature of hearsay testimony or otherwise, relative to the matters set forth in said resolution. And said committee is specifically directed to require one Thomas W. Lawson to name any Member of Congress or other person alleged by him in his testimony before said committee on January 8 and 9, 1917, to have given him any information relating to the subject matter of said resolution.

Mr. MADDEN. Reserving the right to object, I would like to ask the gentleman from Tennessee whether the committee has taken any steps to bring Mr. Lawson before it for a further hearing.

Mr. GARRETT. In answer to the gentleman from Illinois I will state that in a very few moments after the resolution had been rereferred to the committee on Friday last a subpœna was issued to be served on Mr. Lawson to appear to-day. That subpœna was taken by the Sergeant at Arms. He was not able to find Mr. Lawson, but his secretary advised the Sergeant at Arms that Mr. Lawson would arrive in the city some time to-day, that he could not be here at 10 o'clock. Within the last hour the chairman of the Committee on Rules has received a telegram from Mr. Lawson that he will arrive in the city at 2 o'clock and be ready to appear before the committee. It is expected that the hearings will begin at 3 o'clock.

Mr. MANN. This relates to a new resolution?

Mr. GARRETT. A new resolution.

Mr. MANN. Does not the gentleman think it is a little previous to insert in this resolution a requirement that Mr. Lawson shall answer questions which were propounded to him in reference to another resolution then before the committee—this resolution under consideration not having been then introduced?

Mr. GARRETT. The resolution under consideration has been introduced.

Mr. MANN. But it had not then been introduced?

Mr. GARRETT. No; it had not.

Mr. MANN. The purpose of this is to clear up all questions of authority?

Mr. GARRETT. Yes.

Mr. MANN. But it may serve to complicate it. At first blush I should think the House in directing Mr. Lawson to answer an inquiry propounded last week, in relation to a resolution which was not introduced until last Saturday, would rather complicate than clear up the difficulty.

Mr. GARRETT. Mr. Speaker, I will say to the gentleman from Illinois that I would not personally care to express an opinion along that line at this time. I am speaking now for the committee, and I will state that it represents the judgment of the committee. There was doubt in the minds of some members of the committee as to whether House resolutions 420 and 429, or inquiries under this resolution, would reach the point that the House desired the committee to arrive at or obtain the information, or try to obtain the information, and for that reason this resolution was presented, the gentleman from Kansas [Mr. CAMPBELL] having given notice that he would present it, and because of the fact that we desired to begin at 3 o'clock the committee deemed it necessary to have additional power.

Mr. GARNER. Will the gentleman yield?

Mr. GARRETT. Certainly.

Mr. GARNER. As I understand the resolution that the gentleman offers, it refers to a resolution this day introduced by the gentleman from Kansas and referred to the Rules Committee.

Mr. GARRETT. Yes.

Mr. GARNER. Then I think that goes just as far as it would if it was introduced a week ago.

Mr. LENROOT. Will the gentleman yield?

Mr. GARRETT. Yes.

Mr. LENROOT. I will say that the resolution does not direct Mr. Lawson to answer the inquiry which he refused to answer last week; it merely directs him to name the Member of Congress referred to in the testimony, in so far as it is relevant to this resolution.

Mr. GARRETT. That is a very direct and clear statement of the situation.

Mr. LONGWORTH. Will the gentleman yield?

Mr. GARRETT. Certainly.

Mr. LONGWORTH. Was Mr. Lawson given permission to leave Washington at the time he was excused from testifying?

Mr. GARRETT. No; the instructions to Mr. Lawson were to remain subject to the call of the committee.

Mr. LONGWORTH. In Washington?

Mr. GARRETT. I can not say whether it was to remain in Washington or whether it was the general statement to remain subject to the call of the committee.

Mr. LONGWORTH. I happened to be present at the time, and my recollection is that he was instructed to remain in the city of Washington.

Mr. GARRETT. The gentleman may be correct about that.

Mr. LENROOT. After resolution 429 had been reported the committee had no power to subpœna witnesses or order Mr. Lawson to remain here. When it reported the resolution 429 its power to make further order in reference to it was gone.

Mr. LONGWORTH. As a matter of fact, he was ordered to stay here.

Mr. LENROOT. He was; but I do not think he was in contempt of the order after the resolution was reported.

The SPEAKER. Is there objection to the present consideration of the resolution?

There was no objection.

The resolution was agreed to.

FORUM BILL.

The SPEAKER. This is Unanimous Consent Calendar day, and the unfinished business is the bill (H. R. 14816) to provide for the use of the public-school buildings in the District of Columbia as community forums, and for other purposes.

Mr. HARRISON of Mississippi. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. HARRISON of Mississippi. Two weeks ago on the last unanimous-consent day this bill was called on the Unanimous Consent Calendar. It is the forum bill. The parliamentary inquiry I wish to make is, the bill not having been finished on that day, whether or not the Unanimous Consent Calendar should not proceed to the next bill instead of this coming up as unfinished business. I make the inquiry in order to get a ruling, not that I have any objection to the forum bill.

The SPEAKER. It seems to the Chair that the practice has been that a matter having come up and been partially disposed of goes over as unfinished business.

Mr. STAFFORD. Mr. Speaker, a further parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. STAFFORD. The Chair having ruled that this is unfinished business, a question that has not heretofore arisen since the creation of the Unanimous Consent Calendar, whether in the consideration of the Unanimous Consent Calendar after completing this bill the Clerk will continue with the following bill or begin anew as is customary?

The SPEAKER. The Chair thinks he would begin anew. This identical question was up about the Potomac bridge.

Mr. MANN. If the House does not want to consider the bill it has a very easy remedy.

The SPEAKER. Yes; if the House does not want to consider the bill it can raise the question of consideration.

Mr. HARRISON of Mississippi. That was not my object. I propounded the question to find out what the rule was.

The SPEAKER. It seems to the Chair that the ruling heretofore made ought to be adhered to.

Mr. JOHNSON of Kentucky. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 14816, known as the forum bill.

The question was taken; and on a division (demanded by Mr. JOHNSON of Kentucky) there were—ayes 50, noes 64.

Mr. JOHNSON of Kentucky. Mr. Speaker, I make the point of order that there is no quorum present.

The SPEAKER. The Chair will count. [After counting.] One hundred and fifty-nine Members present, not a quorum. The Doorkeeper will close the doors, the Sergeant at Arms will notify the absentees, and the Clerk will call the roll. The question is on the motion of the gentleman from Kentucky that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the forum bill.

The question was taken; and there were—yeas 132, nays 203, answered "present" 1, not voting 98, as follows:

YEAS—132.

Abercrombie	Dyer	Keating	Roberts, Mass.
Adair	Emerson	Kent	Rubey
Adamson	Evans	Key, Ohio	Rucker, Mo.
Alexander	Farley	Kincheloe	Russell, Mo.
Allen	Fields	Konop	Schall
Almon	Flood	Lenroot	Shackleford
Anthony	Focht	Lewis	Shallenberger
Ashbrook	Foster	Lindbergh	Sherley
Austin	Frear	Linthicum	Sherwood
Ayres	Freeman	Littlepage	Sims
Bailey	Gallagher	Lloyd	Sinnott
Barkley	Gard	London	Sisson
Barnhart	Gillett	McAndrews	Slayden
Blackmon	Glynn	McKellar	Slemp
Booher	Gordon	Mapes	Smith, Mich.
Browne	Gray, Ala.	Mooney	Smith, N. Y.
Buchanan, Ill.	Gray, Ind.	Moore, Pa.	Sparkman
Burgess	Hamill	Moores, Ind.	Steele, Pa.
Burke	Harrison, Miss.	Neely	Stephens, Nebr.
Cantrill	Hayden	Nelson	Stone
Carlin	Heflin	Nolan	Stout
Cary	Helgesen	Norton	Sutherland
Cooper, Wis.	Helvering	Oakey	Taggart
Copley	Hilliard	Oliver	Tague
Cox	Holland	Overmyer	Talbott
Cramton	Houston	Padgett	Tavenner
Crosser	Huddleston	Parker, N. J.	Taylor, Ark.
Cullop	Hughes	Phelan	Tilson
Dewalt	Hull, Tenn.	Pou	Tinkham
Dill	Humphreys, Miss.	Rainey	Towner
Dixon	James	Raker	Van Dyke
Doolittle	Johnson, Ky.	Ramseyer	Williams, W. E.
Dupré	Johnson, Wash.	Reilly	Young, N. Dak.

NAYS—203.

Anderson	Butler	Chandler, N. Y.	Curry
Aswell	Byrnes, S. C.	Charles	Dale, Vt.
Bell	Byrns, Tenn.	Clark, Fla	Dallinger
Borland	Campbell	Cline	Danforth
Britt	Candler, Miss.	Coady	Decker
Britten	Cannon	Collier	Dempsey
Browning	Capstick	Connelly	Denison
Buchanan, Tex.	Caraway	Cooper, Ohio	Dent
Burnett	Carter, Okla.	Crisp	Dickinson
Dies	Hicks	Miller, Minn.	Snyder
Dillon	Hinds	Montague	Stafford
Doremus	Hollingsworth	Moon	Steagall
Doughton	Hood	Morgan, La.	Stedman
Dowell	Hopwood	Morgan, Okla.	Steele, Iowa
Dunn	Howard	Morrison	Steenerson
Eagle	Howell	Mott	Stephens, Miss.
Ellsworth	Hull, Iowa	Mudd	Sterling
Elston	Husted	Murray	Stiness
Esch	Igoe	Nicholls, S. C.	Sulloway
Estopinal	Jacoway	North	Sumners
Fairchild	Johnson, S. Dak.	Oldfield	Sweet
Ferris	Kahn	Olney	Switzer
Fess	Kearns	O'Shaunessy	Taylor, Colo.
Fitzgerald	Kelley	Paige, Mass.	Temple
Fordney	Kennedy, Iowa	Park	Thomas
Foss	Kennedy, R. I.	Parker, N. Y.	Thompson
Fuller	Kettner	Platt	Tillman
Gandy	King	Porter	Timberlake
Garner	Kinkaid	Powers	Treadway
Garrett	La Follette	Pratt	Vare
Godwin, N. C.	Langley	Quin	Venable
Good	Lazaro	Ragsdale	Vinson
Gould	Lee	Randall	Volstead
Green, Iowa	Lehlbach	Rauch	Walker
Greene, Mass.	Longworth	Rayburn	Walsh
Greene, Vt.	Loud	Reavis	Ward
Gregg	McClintic	Ricketts	Wason
Guernsey	McCracken	Roberts, Nev.	Watkins
Hadley	McCulloch	Rogers	Watson, Va.
Hamilton, Mich.	McFadden	Rouse	Webb
Hamlin	McKenzie	Rowe	Wheeler
Hardy	McKinley	Rucker, Ga.	Williams, T. S.
Harrison, Va.	McLaughlin	Scott, Mich.	Williams, Ohio
Hastings	McLemore	Sears	Wilson, Ill.
Haugen	Madden	Shouse	Wilson, La.
Hawley	Magee	Sloan	Wingo
Hayes	Mann	Small	Winslow
Heaton	Matthews	Smith, Idaho	Wise
Helm	Mays	Smith, Minn.	Woods, Iowa
Hensley	Meeker	Smith, Tex.	Young, Tex.
Hernandez	Miller, Del.	Snell	

ANSWERED "PRESENT"—1.

Whaley

NOT VOTING—98.

Aiken	Davenport	Hill	Nichols, Mich.
Bacharach	Davis, Minn.	Hulbert	Oglesby
Barchfeld	Davis, Tex.	Humphrey, Wash.	Page, N. C.
Beakes	Dooling	Hutchinson	Patten
Beales	Driscoll	Jones	Peters
Benedict	Drukker	Keister	Price
Bennet	Eagan	Kiess, Pa.	Riordan
Black	Edmonds	Kitchin	Rodenberg
Bowers	Edwards	Kreider	Rowland
Bruckner	Farr	Lafean	Russell, Ohio
Brumbaugh	Finley	Lesher	Sabath
Caldwell	Flynn	Lever	Sanford
Callaway	Gallivan	Lieb	Saunders
Carew	Gardner	Liebel	Scott, Pa.
Carter, Mass.	Garland	Lobeck	Scully
Casey	Glass	Loft	Sells
Chiperfield	Goodwin, Ark.	McArthur	Siegel
Church	Graham	McDermott	Stephens, Tex.
Coleman	Gray, N. J.	McGillicuddy	Swift
Conry	Griest	Maher	Watson, Pa.
Cooper, W. Va.	Griffin	Martin	Wilson, Fla.
Costello	Hamilton, N. Y.	Miller, Pa.	Wood, Ind.
Crago	Hart	Mondell	Woodyard
Dale, N. Y.	Haskell	Morin	
Darrow	Henry	Moss	

So the motion was rejected.

The Clerk announced the following pairs:

Until further notice:

Mr. STEPHENS of Texas with Mr. SIEGEL.

Mr. WILSON of Florida with Mr. SWIFT.

Mr. HENRY with Mr. ANTHONY.

Mr. FLYNN with Mr. HAMILTON of New York.

Mr. FINLEY with Mr. GRAY of New Jersey.

Mr. CAREW with Mr. BACHARACH.

Mr. BEAKES with Mr. GRIEST.

Mr. GOODWIN of Arkansas with Mr. WATSON of Pennsylvania.

Mr. DALE of New York with Mr. HASKELL.

Mr. SCULLY with Mr. MCARTHUR.

Mr. AIKEN with Mr. CHIPERFIELD.

Mr. KONOP with Mr. SANFORD.

Mr. HART with Mr. HILL.

Mr. BRUCKNER with Mr. BARCHFELD.

Mr. BRUMBAUGH with Mr. WOOD of Indiana.

Mr. CALDWELL with Mr. WOODYARD.

Mr. CALLAWAY with Mr. BENNET.

Mr. CASEY with Mr. BOWERS.

Mr. CHURCH with Mr. CARTER of Massachusetts.

Mr. CONRY with Mr. COLEMAN.

Mr. DAVENPORT with Mr. COOPER of West Virginia.

Mr. DAVIS of Texas with Mr. COSTELLO.

Mr. DOOLING with Mr. CRAGO.

Mr. DRISCOLL with Mr. DARROW.

Mr. EAGAN with Mr. DAVIS of Minnesota.

Mr. EDWARDS with Mr. DRUKKER.

Mr. GALLIVAN with Mr. EDMONDS.

Mr. GLASS with Mr. FARR.
Mr. GRIFFIN with Mr. GARLAND.
Mr. HULBERT with Mr. GRAHAM.
Mr. JONES with Mr. HUMPHREY of Washington.
Mr. KITCHIN with Mr. HUTCHINSON.
Mr. LESHER with Mr. KEISTER.
Mr. LEVER with Mr. KIESS of Pennsylvania.
Mr. LIEB with Mr. KREIDER.
Mr. LIEBEL with Mr. LAFEAN.
Mr. LOFT with Mr. MARTIN.
Mr. MCDERMOTT with Mr. MILLER of Pennsylvania.
Mr. MCGILLICUDDY with Mr. MONDELL.
Mr. MAHER with Mr. MORIN.
Mr. MOSS with Mr. NICHOLS of Michigan.
Mr. OGLESBY with Mr. PETERS.
Mr. PATTEN with Mr. BEALES.
Mr. PRICE with Mr. ROWLAND.
Mr. RIORDAN with Mr. RUSSELL of Ohio.
Mr. SABATH with Mr. SCOTT of Pennsylvania.
Mr. SAUNDERS with Mr. SELLS.

The result of the vote was announced as above recorded.

The SPEAKER. A quorum is present; the Doorkeeper will unlock the doors.

Mr. JOHNSON of Kentucky. Mr. Speaker, I ask unanimous consent that this bill be considered in the House as in the Committee of the Whole House on the state of the Union.

The SPEAKER. The gentleman from Kentucky asks unanimous consent that this bill be considered in the House as in Committee of the Whole House on the state of the Union. Is there objection?

Mr. FERRIS. Mr. Speaker, without having any hearing on the merits of this bill—reserving the right to object, is this bill in regular order on the Calendar for Unanimous Consent and subject to call?

Mr. JOHNSON of Kentucky. This bill has to be disposed of some way before there is any other business in order.

Mr. MANN. Not at all.

Mr. FERRIS. Mr. Speaker, I desire to know if this bill is on the regular call under the regular procedure on Unanimous Consent Monday. I repeat the inquiry, Is this bill on the regular call in the regular method of procedure of unanimous-consent call? If not, I shall feel constrained to object. I have no views on the bill one way or the other. I merely want each bill to have a fair chance.

The SPEAKER. This bill is the unfinished business coming over from the regular order of two weeks ago. Does the gentleman object to the request of the gentleman from Kentucky?

Mr. FERRIS. How can there be unfinished business from one unanimous-consent day to the other? Under this procedure one bill might hold the calendar indefinitely. This would practically do away with this day.

The SPEAKER. It has been ruled on two or three times and it seems to be the most orderly way of proceeding. You get a bill up here and fool away a whole day on it——

Mr. FERRIS. Mr. Speaker, reserving the right to object, there are about 25 or 30 Members coming from the far Western States that have little bills—bills that will only require a few minutes. This is their only chance to get them considered, on unanimous-consent day, and that is, indeed, a very slim one, because we have to run the gantlet of unanimous-consent objection. We have little or no consideration under suspension of the rules, and I do not think it proper to take up a bill of this importance reported from the District Committee, when they have a District day, and consume an entire day for the consideration of bills from that committee. I have nothing to say whatever about the merits of the bill.

Mr. MANN. Mr. Speaker, I submit that where unanimous consent was given for the consideration of a bill which requires consideration in the Committee of the Whole House on the state of the Union and the House declines on motion to go into the Committee of the Whole House on the state of the Union that that ends the unanimous consent given.

Mr. JOHNSON of Kentucky. Not at all, Mr. Speaker; I have the right and I do make the motion that the House resolve itself into the Committee of the Whole House on the state of the Union for the purpose of considering H. R. 14816.

Mr. MANN. That has been made and voted down.

The SPEAKER. It is clear——

Mr. JOHNSON of Kentucky. There has been intervening business and this bill still retains its place on the calendar until disposed of in the regular way.

Mr. MANN. The gentleman from Kentucky is in error.

The SPEAKER. The House clearly expressed itself about it by voting 202 against to 132 in favor.

Mr. JOHNSON of Kentucky. The House, Mr. Speaker, may have expressed its desire, but it has not expressed it on the parliamentary question. The question of "consideration" is the only way by which this bill can be gotten out of its position on this calendar now.

Mr. RAGSDALE. Then, Mr. Speaker, I demand the question of consideration.

Mr. MANN. Mr. Speaker, it has always been held, even though a bill under a special rule should be in order and goes over, you can raise the question of consideration on it when it comes up again. This is a bill that requires consideration in the House, but the same rule as to the question of consideration in the House applies to a motion to go into the Committee of the Whole House on the state of the Union on a Union Calendar bill. That has been decided, and that ends the unanimus consent that has been granted.

The SPEAKER. The Chair will not rule on that point. The Chair will rule, though, that the motion of the gentleman from Kentucky is not in order.

Mr. JOHNSON of Kentucky. Mr. Speaker, I insist this bill is yet before the House and undisposed of. There is but one motion that will dispose of it and that is the "question of consideration."

The SPEAKER. The motion to go into the Committee of the Whole House on the state of the Union is equivalent.

Mr. JOHNSON of Kentucky. If the Chair holds that way——

The SPEAKER. The gentleman from Kentucky asks unanimous consent that this bill be considered in the House as in Committee of the Whole House on the state of the Union. Is there objection?

Mr. RAGSDALE. Mr. Speaker, I object.

The SPEAKER. The gentleman from South Carolina objects.

Mr. JOHNSON of Kentucky. Then, Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for its consideration.

Mr. MANN. Mr. Speaker, I believe under the rules that motion can not be made a second time in a day.

Mr. JOHNSON of Kentucky. There is no rule for it; there is but one way to get rid of this bill and that is to raise the "question of consideration."

The SPEAKER. Well, a motion to go into Committee of the Whole House on the state of the Union is precisely the same thing.

Mr. JOHNSON of Kentucky. Not at all, Mr. Speaker.

Mr. GARNER. Mr. Speaker, I suggest the Chair must at some time rule on this question.

The SPEAKER. What question?

Mr. GARNER. The question of whether, after a bill has gotten permission to be considered by unanimous consent, and the motion is made to go into the Committee of the Whole House on the state of the Union and that motion is voted down, whether that disposes of the bill. If it is equal to that of consideration, it certainly disposes of it, because if you raise the question of consideration, and the House refuses to consider, that certainly disposes of the bill.

Mr. JOHNSON of Kentucky. Not at all.

Mr. MANN. It does not dispose of the bill, but it disposes of the question of unanimous consent.

Mr. GARNER. Yes; so the House has just voted on the question of whether it will go into the Committee of the Whole House on the state of the Union to consider this bill, and, by a vote of 202 to 132, it declined to go into the Committee of the Whole House on the state of the Union. The gentleman from Kentucky then asked that the House consider in the House, as in the Committee of the Whole House on the state of the Union, this bill, and the gentleman from South Carolina [Mr. RAGSDALE] objected. Now the gentleman makes a motion to go into the Committee of the Whole House on the state of the Union.

If the House votes it down again, then the gentleman asks unanimous consent to consider it in the House, as in the Committee of the Whole, and if objection is made we again vote on going into the Committee of the Whole. It would be an endless proceeding.

Mr. JOHNSON of Kentucky. There is but one proposition that can parliamentarily come before this House, and that is the "question of consideration." That is all that is left. And as soon as they decline to make that motion I shall insist in one way or another in getting this matter up for consideration.

Mr. RAGSDALE. A point of order, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. RAGSDALE. How can they raise that question when the Chair has ruled that this motion that is now made by the gentleman from Kentucky is out of order and can not be considered, and that this is not before the House?

Mr. JOHNSON of Kentucky. Then, until the gentlemen avail themselves of their one remedy the House will sit here doing nothing.

Mr. MANN. Does the gentleman from Kentucky contend you can keep going through this process all day?

Mr. JOHNSON of Kentucky. I do when they have a remedy of which they will not avail themselves.

Mr. SHERLEY. Mr. Speaker——

The SPEAKER. The gentleman from Kentucky is recognized.

Mr. SHERLEY. If the Speaker will permit, I do not have any doubt about the facts. I voted for the bill, and I would like to see it considered; but there is not any question whatever that under the procedure of this House the voting down of the motion to go into the Committee of the Whole House on the state of the Union to consider a bill is tantamount to and the same thing as refusing to consider, and that the bill is out of the way of the House for consideration now.

Mr. LENROOT. Mr. Speaker, I desire to call the attention of the Chair to the Manual, on page 337, which has this note to section 753:

On a motion to go into Committee of the Whole to consider a bill the House expresses its wish as to consideration by its vote on this motion.

And citing volume 5 of Hinds' Precedents, pages 4973 to 4976.

Mr. MANN. Mr. Speaker, permit me to call the attention of the Chair to the rule on a similar matter. Under the rules, when there is a call of the committee not on Calendar Wednesday the committee calls up a bill on the House Calendar, and at the end of an hour it is in order to move to go into Committee of the Whole on a Union Calendar bill.

Paragraph 5 of Rule XXIV expressly provides if that motion be determined in the negative it shall not be in order to make motion again until the disposal of the matter under consideration or discussion, which would be the House bill. Now, what we are having under consideration to-day is the Unanimous Consent Calendar. Here is a bill where it was in order to go into the Committee of the Whole on that calendar. That vote was decided in the negative. While the rule does not expressly cover it, it is a similar case, and I think a similar ruling ought to be made.

Mr. JOHNSON of Kentucky. The position of the gentleman from Illinois, Mr. Speaker, is not at all well taken. The Unanimous Consent Calendar is not the business under consideration.

Mr. MANN. Oh, yes.

Mr. JOHNSON of Kentucky. The business under consideration is a bill which is upon the Unanimous Consent Calendar.

Mr. MANN. But it comes on the call of the Unanimous Consent Calendar.

The SPEAKER. There are several precedents about this matter, and the Chair will take the trouble to read only one of them. They all rule the same way. On page 21, volume 5, section 4975, of Hinds' Precedents is the following:

On February 23, 1901, Mr. William P. Hepburn, of Iowa, under the terms of a special order which made his motion the regular order, moved that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (H. R. 5499) to promote the efficiency of the Revenue-Cutter Service.

Mr. OSCAR W. UNDERWOOD, of Alabama, rising to a parliamentary inquiry, asked if it would be in order to raise the question of consideration.

The Speaker said:

"The Chair thinks not; but the question can be tested on the motion to go into Committee of the Whole. That presents the same situation as if the question of consideration were raised."

There are four or five precedents, all of which are along the same line. Therefore the Chair declines to recognize the gentleman from Kentucky [Mr. JOHNSON] to move to go into the Committee of the Whole again.

HOUSE RESOLUTIONS 447 AND 448.

On motion of Mr. GARRETT, a motion to reconsider the vote by which House resolutions 447 and 448 were agreed to was laid on the table.

WITHDRAWAL OF PAPERS.

Mr. BOOHER, by unanimous consent, was granted leave to withdraw from the files of the House, without leaving copies, papers in the case of George Welty, no adverse report having been made thereon.

SECTION 20, ACT TO REGULATE COMMERCE.

The SPEAKER. The Clerk will call the first bill.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 563) to amend section 20 of an act to regulate commerce, to prevent overissues of securities by carriers, and for other purposes.

The SPEAKER. Is there objection?

Mr. STAFFORD. Mr. Speaker, reserving the right to object, I would like to inquire of the gentleman having charge of the bill, the Rayburn bill, whether, if he takes this up for consideration, it will be considered in the House or in the Committee of the Whole?

Mr. ADAMSON. It is immaterial to me. I intended to move to go into the Committee of the Whole House, but I prefer, if the House is willing, to consider it in the House as in Committee of the Whole.

Mr. STAFFORD. The gentleman will realize it will take most of the day if we enter into the consideration of this important bill.

Mr. ADAMSON. I do not think it ought to do so. We have had this up at a previous session and passed it with only 12 dissenting votes.

Mr. STAFFORD. I think this is too important a bill to be considered on the Unanimous Consent Calendar, and, therefore, I object.

Mr. ADAMSON. Will the gentleman consent to leaving it on the calendar?

Mr. STAFFORD. I will.

Mr. ADAMSON. Mr. Speaker, I ask that.

The SPEAKER. The gentleman from Georgia [Mr. ADAMSON] asks that the bill be passed over without prejudice. Is there objection?

Mr. MANN. Reserving the right to object, it seems to me there ought to be some limit of time on some of these bills at the top of the Unanimous Consent Calendar. There are not very many more unanimous-consent days in this Congress. Every gentleman who has a bill on the calendar, which he knows will not be considered under unanimous consent, still asks to have the bill retained on the calendar. I am not going to object to this bill just to further demonstrate what would happen. You could not finish this bill in three days.

Mr. ADAMSON. Mr. Speaker, "while there is life there is hope." So long as it remains on the calendar there is a chance for its consideration.

Mr. MANN. And it is a good bill at that.

Mr. STAFFORD. Mr. Speaker, I withdraw my objection to the consideration of this bill.

The SPEAKER. The gentleman from Wisconsin withdraws his objection to the consideration of the bill. Is there objection?

Mr. MANN. Reserving the right to object, Mr. Speaker, I would be very glad to have this bill considered, but the House has just indicated that it did not desire to-day, on unanimous-consent day, to consider a very worthy bill. That bill could be discussed in one-third of the time that it will take to dispose of this bill. If, however, gentlemen want to go ahead with the stock-and-bond bill and take up to-day, and the next unanimous-consent day, and the next unanimous-consent day with it, with the certainty that even then the bill will not become a law in this Congress, I am not going to object to it.

The SPEAKER. Is there objection?

Mr. ADAMSON. Mr. Speaker, replying to the gentleman from Illinois, if the Chair will permit, there is really no necessity for prolonged debate on that bill. We passed this bill two years ago in one day, after having it thoroughly debated, and there is no necessity for long debate on it now, if gentlemen do not want to speak. It will, in my judgment, settle the whole railroad controversy that is now before the country.

Mr. MANN. Oh, the gentleman knows very well that this is probably the most important legislation proposed at this session of Congress. I would have been willing to spend a week working at it, so far as I am concerned.

Mr. ADAMSON. Will not the gentleman admit that the bill was thoroughly considered when the House passed it two years ago?

Mr. MANN. I will not admit that it was proper to call it up when the committee called it up. That is not a proper thing to do.

Mr. ADAMSON. I stand pat in my advocacy of this bill, and here is another opportunity, Mr. Speaker, and I do not feel at liberty to slight this opportunity.

Mr. FERRIS. Mr. Speaker, reserving the right to object, does the gentleman say there will be free debate on this bill?

Mr. ADAMSON. As full and free debate as has already been had.

Mr. MANN. I do not think that this bill was ever debated to any great extent in this House. I have no recollection of it, at least.

Mr. ADAMSON. I have a higher opinion of Members' recollection than that.

Mr. MANN. If there was any considerable debate on it, it made no impression on Members' minds.

Mr. ADAMSON. I do not think I would be performing my duty if I withdrew the bill now.

Mr. FERRIS. I have no personal interest in these bills, Mr. Speaker; but let me appeal to the gentleman from Georgia and ask him, Does he think he ought to bring up a bill of this kind that will take up all the unanimous-consent days at this session?

Mr. ADAMSON. I shall not retaliate in kind, I will say to the gentleman from Oklahoma; but I believe this bill is more important than all the other bills on the calendar at this time.

Mr. FERRIS. If the gentleman thinks it so important, I shall not object to it.

Mr. DENISON. Mr. Speaker, I do not think a question that affects all the railroads in the country ought to be settled in an hour. I object.

The SPEAKER. The gentleman from Illinois [Mr. DENISON] objects.

Mr. ADAMSON. Mr. Speaker, I ask that this bill be passed over without prejudice. Gentlemen may have a change of mind by the time the next unanimous-consent day comes along.

The SPEAKER. The gentleman from Georgia [Mr. ADAMSON] asks unanimous consent that this bill be passed over without prejudice. Is there objection?

There was no objection.

GRANT OF PUBLIC LANDS TO THE STATE OF OKLAHOMA.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 15156) granting public lands to the State of Oklahoma.

The title of the bill was read.

Mr. McCLINTIC. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

Mr. JOHNSON of Kentucky. I object, Mr. Speaker, on the theory that this bill would not be concluded to-day if taken up.

The SPEAKER. The gentleman from Kentucky objects, and the gentleman from Oklahoma [Mr. McCLINTIC] asks unanimous consent that it be passed over without prejudice. Is there objection?

There was no objection.

UNCOMPAHGRE INDIAN RESERVATION, UTAH.

The next business on the Calendar for Unanimous Consent was the bill (S. 43) in relation to the location, entry, and patenting on lands within the former Uncompahgre Indian Reservation, in the State of Utah, containing gilsonite or other like substances, and for other purposes.

The title of the bill was read.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. I object.

Mr. MAYS. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. The gentleman from Utah asks unanimous consent that this bill be passed over without prejudice. Is there objection?

There was no objection.

CLAIM OF THE SIOUX TRIBE OF INDIANS.

The next business on the Calendar for Unanimous Consent was the bill (S. 4371) authorizing the Sioux tribe of Indians to submit claims to the Court of Claims.

The title of the bill was read.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. I object.

Mr. GANDY. Mr. Speaker, I ask unanimous consent that this bill and the next, numbered 281 and 282 on the calendar, be passed over without prejudice.

The SPEAKER. The gentleman from South Dakota [Mr. GANDY] asks unanimous consent that Nos. 281 and 282 be passed over without prejudice. Is there objection?

There was no objection.

NATIONAL INSURANCE FUND.

The next business on the Calendar for Unanimous Consent was the resolution (H. J. Res. 250) to provide for the appointment of a commission to prepare and recommend a plan for the establishment of a national insurance fund, and for the mitigation of the evil of unemployment.

The title of the resolution was read.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. Mr. Speaker, I do not see that on the calendar.

The SPEAKER. It is right after No. 282.

Mr. MANN. It is on the Unanimous Consent Calendar, No. 305.

The SPEAKER. Is there objection?

Mr. MOORE of Pennsylvania rose.

The SPEAKER. For what purpose does the gentleman from Pennsylvania rise?

Mr. MOORE of Pennsylvania. Reserving the right to object, Mr. Speaker, I want to say that this bill involves an appropriation and the appointment of a commission. It is too important a bill to be disposed of by unanimous consent, and therefore I object in order that there may be a more careful consideration of it.

The SPEAKER. The gentleman from Pennsylvania objects.

Mr. LONDON. Mr. Speaker, will the Speaker recognize me for a motion to suspend the rules?

The SPEAKER. The Chair will recognize the gentleman at about half past 4 or 5 o'clock.

Mr. LONDON. Then I ask, Mr. Speaker, that the bill retain its place on the calendar without prejudice.

The SPEAKER. The gentleman from New York asks unanimous consent that this resolution be passed over without prejudice. Is there objection?

There was no objection.

AVIATION IN THE COAST GUARD.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 15736) to provide for aviation in the Coast Guard.

The title of the bill was read.

The SPEAKER. Is there objection?

Mr. COX. I reserve the right to object.

Mr. LONDON. I object, Mr. Speaker.

Mr. MONTAGUE. Mr. Speaker, will the gentleman from New York withhold his objection for a moment?

Mr. LONDON. I will.

Mr. MONTAGUE. I ask unanimous consent, Mr. Speaker, in view of the fact that the object of this legislation has been accomplished in two other bills, namely, the Army bill and the Navy bill, that this bill in particular be laid on the table. I apprehend that that is the parliamentary step to take.

The SPEAKER. The gentleman from Virginia asks unanimous consent that the bill be laid on the table. Is there objection?

There was no objection.

ASSESSMENTS FOR OPENING STREETS, ETC., DISTRICT OF COLUMBIA.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 15460) to provide for the payment of assessments for benefits for the opening of streets, avenues, roads, and alleys in the District of Columbia, and for other purposes.

The title of the bill was read.

The SPEAKER. Is there objection?

Mr. BORLAND. I object.

The SPEAKER. The gentleman from Missouri objects, and the bill is stricken from the calendar.

HOURS OF SERVICE OF RAILROAD EMPLOYEES.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 9216) to amend sections 2, 3, 4, and 5 of an act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. COADY. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. The gentleman from Maryland asks that this bill be passed over without prejudice. Is there objection?

Mr. VARE. Reserving the right to object, I should like to ask the gentleman if the same purpose has not been attained in the Adamson bill?

Mr. COADY. I think so; yes.

The SPEAKER. Is there objection?

Mr. ADAMSON. There are some skeptical people who pretend that the Adamson bill will not stand. If it should fail, we might have to legislate again, you know, and it is well enough to let this stand for the present, out of respect to the skeptics.

The SPEAKER. Is there objection to this bill going over without prejudice?

There was no objection.

MISBRANDED ARTICLES.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 10496) to prohibit the manufacture, sale, or transportation in interstate commerce of misbranded articles, to regulate the traffic therein, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. MOORE of Pennsylvania. Mr. Speaker, I object.

Mr. BARKLEY. I ask unanimous consent——

Mr. MOORE of Pennsylvania. If the gentleman from Kentucky wants to discuss the bill, I will reserve the right to object. It is too important a bill to be passed in this way.

Mr. BARKLEY. I do not want to discuss it, but I ask unanimous consent to pass it over without prejudice.

The SPEAKER. The gentleman from Kentucky asks unanimous consent to pass it over without prejudice. Is there objection?

There was no objection.

AUXILIARY RECLAMATION PROJECT, YUMA, ARIZ.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 14825) to provide for an auxiliary reclamation project in connection with the Yuma project, Arizona.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. BORLAND. Mr. Speaker, reserving the right to object, I should like to have that bill reported.

The SPEAKER. The Clerk will report the bill.

Mr. HAYDEN. Mr. Speaker, I ask unanimous consent to substitute the Senate bill of similar title for this bill.

The SPEAKER. Is it of similar tenor?

Mr. HAYDEN. Of similar tenor and similar title, S. 5718.

The SPEAKER. Where is that bill?

Mr. HAYDEN. Is is on the Unanimous Consent Calendar.

Mr. MANN. It is Unanimous Consent Calendar 394 (S. 5718).

Mr. BORLAND. Mr. Speaker, it seems to me we should have the bill reported.

The SPEAKER. If the gentleman from Arizona [Mr. HAYDEN] is going to ask to have the Senate bill considered instead of the House bill, the Chair thinks it best to have the Senate bill read.

The Clerk read the bill (S. 5718) to provide for an auxiliary reclamation project in connection with the Yuma project, Arizona, as follows:

Be it enacted, etc., That the Secretary of the Interior is hereby authorized to set apart any lands in the State of Arizona heretofore or hereafter withdrawn under the reclamation law, in connection with the Yuma reclamation project, as an auxiliary reclamation project or unit, and sell, in tracts of not more than 160 acres to any one purchaser, the lands so set apart and believed to be susceptible of irrigation, at public sale under suitable regulations, for not less than the reasonable value per acre of the land plus the estimated cost per acre of reclamation works to be constructed for the reclamation of said lands so set apart plus the proportionate cost per acre of the works previously constructed and available therefor. That appurtenant water rights for lands in private ownership may be sold for not to exceed 160 acres to any one person, at a price which shall not be less than the highest price per acre paid for public land sold under the provisions of this act, payment thereof to be made under the same terms as for public land under the provisions of section 2. Final water-right certificate shall not be issued to such private land until payment has been made in full. No works shall be constructed nor water delivered through any of the works of the Yuma project for the irrigation of any such private lands unless application has been made to purchase a water right for such land under the terms and provisions of this section. The Secretary of the Interior, at or prior to the time of sale, shall fix and determine (a) the reasonable value of the land per acre; (b) the estimated cost per acre of the works to be constructed; and (c) the proportionate cost per acre of the works previously constructed and available for the lands offered for sale.

SEC. 2. That all bidders at such public sale shall be required to make a deposit of 10 per cent of the amount bid for the tract proposed to be purchased, and upon notice from the Secretary of the Interior that such bid has been accepted shall be required to pay 15 per cent additional within 60 days after such notice. In case of failure to do so the deposit shall be forfeited and the corresponding lands shall be available for further sale. In case the bids for the lands shall not aggregate a sufficient amount within six months from the time fixed for the filing of bids to meet the probable cost as announced, all deposits shall be returned. The remaining 75 per cent of the purchase price shall be paid in three annual installments, with interest at 6 per cent per annum on deferred payments until paid, running from the date of notice to pay the additional 15 per cent, but advance payments may be received at any time. Upon full payment of the purchase price patent shall issue for the lands, and no qualification or limitation shall be required of any purchaser or patentee except that he be a citizen of the United States or have declared his intention to become such citizen. Such patent shall also contain a grant of a water-right appurtenant to the land.

SEC. 3. That the moneys received under the provisions of this act shall be paid into the Treasury of the United States and be covered into a separate fund known as the auxiliary reclamation fund of the Yuma project, Arizona.

SEC. 4. That the money in the said auxiliary reclamation fund of the Yuma project, Arizona, shall be available for the construction or completion of irrigation works for the said auxiliary project or unit to the extent of the moneys received on account thereof in connection with the sale of the lands therein. The landowners shall pay the cost of operation and maintenance, and the charges to cover such cost as fixed by the Secretary of the Interior shall be paid each year in advance of the delivery of water. Upon the announcement by the Secretary of the Interior of the completion of the said auxiliary project or unit thereof, the operation and maintenance of the irrigation works shall, as soon as practicable, be turned over to an organization representing a majority of the landowners, to be operated and maintained by them at their expense in accordance with a contract therefor to be made with the Secretary of the Interior.

SEC. 5. Any surplus of funds paid on account of construction remaining after completion thereof, and that any money remaining in said separate fund known as the auxiliary reclamation fund of the Yuma project, Arizona, after completion of the said auxiliary project and after reimbursement of the reclamation fund for the proportionate share of works built by means of the latter fund shall be credited to the cost of operation and maintenance of the works of the said auxiliary project, and any balance thereof on hand when the said auxiliary project is taken over, as provided in section 4, shall be paid to the contracting organization.

SEC. 6. That the provisions of the reclamation act of June 17, 1902, and acts amendatory thereof and supplementary thereto, known as the reclamation law, shall be applicable to such auxiliary project, except any portions of such acts as may be in conflict with the provisions hereof.

SEC. 7. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect.

With the following committee amendments:

Page 2, line 4, after the word "for," strike out the remainder of line 4 and lines 5, 6, 7, 8, 9, and 10, down to and including the word "two," and insert in lieu thereof the following:

"That appurtenant water rights for lands in private ownership may be sold for not to exceed 160 acres to any one person at a price equal to the estimated cost per acre of the works to be constructed plus the proportionate cost per acre of the works previously constructed and available for the lands, if any there be, payment to be made under the same terms as for public land under the provisions of section 2."

Page 3, lines 23 and 24, strike out the words "or have declared his intention to become such citizen."

Page 4, line 1, after the word "land," add the following to section 2:

"*Provided*, That any person who has made an entry which is now valid and subsisting, or who has a preference right to make entry, for any irrigable land embraced within the limits of the auxiliary project, may purchase said land at the price of $2.50 per acre and shall be subject to the same payments for the irrigation works as is required of persons holding private lands under the provisions of section 1 hereof: *Provided further*, That the purchasers or owners of the land to be irrigated under said auxiliary reclamation project shall also agree to pay to the United States the total actual cost of the works of said auxiliary reclamation project in the event that the actual cost of said works shall exceed the estimated cost thereof."

The SPEAKER. Is there objection to the present consideration of the Senate bill, it being a bill of similar tenor on the calendar.

Mr. BORLAND. Mr. Speaker, I reserve the right to object.

The SPEAKER. The gentleman will proceed.

Mr. BORLAND. This is rather a novel reclamation project, and I would like to have the gentleman in charge of the bill give us some explanation of it before we proceed with it. As I understand it, the purpose is to irrigate what is known as the mesa lands connected with the Yuma project.

Mr. HAYDEN. The gentleman is correct.

Mr. BORLAND. These mesa lands have heretofore been withdrawn as lands susceptible of irrigation, but in order to reclaim them it is going to be necessary to install a pumping plant operated by power obtained from the Laguna Dam. Is that the idea?

Mr. HAYDEN. That is the idea.

Mr. BORLAND. And the water will be pumped up to the level of the mesa?

Mr. HAYDEN. Yes.

Mr. BORLAND. How much of the mesa land is going to be irrigated in that way?

Mr. HAYDEN. About 40,000 acres.

Mr. BORLAND. It is that auxiliary plant to pump the water up to the mesa lands, and the power therefor, and of course the canals and ditches in the mesa, that are included in this so-called auxiliary project?

Mr. HAYDEN. Yes.

Mr. BORLAND. Does the bill contemplate that the holders of these mesa lands shall pay also a portion of the cost of the original project?

Mr. HAYDEN. Yes; the purchasers and owners of the mesa lands are to pay the proportionate cost, the bill says, per acre of the work previously constructed and available for the land.

Mr. BORLAND. What is meant by the words "available for the land"?

Mr. HAYDEN. Available for the irrigation of this land is the Laguna Dam, the canal extending from the Laguna Dam on the California side to where it returns to the Colorado River, the siphon under the river, and the main canal on the Arizona side of the river down to the point where the pump is to be located.

Mr. BORLAND. This pump is to be wholly available for the mesa land?

Mr. HAYDEN. Yes.

Mr. BORLAND. Nobody else can use that?

Mr. HAYDEN. And the holders of the mesa land are to pay the estimated cost per acre of the works to be constructed; that is, the cost of the pump and the canals and laterals that will be built on the mesa.

Mr. BORLAND. As I understand the plan, it is intended that the Government shall sell so much of the mesa land as is public land and put the money received therefor in a separate fund for these auxiliary works.

Mr. HAYDEN. Yes; for the reason that there is now no money available in the reclamation fund to construct any such auxiliary project.

Mr. BORLAND. Is the money in the auxiliary fund to apply only on the auxiliary work, or will it apply also on the proportionate cost of the original work?

Mr. HAYDEN. It will apply on both. The bill says that the money placed in this fund shall be used to construct new works, and to pay the proportionate cost of the works that have already been constructed. So if this plan is carried out, money will be available and paid into the reclamation fund to reimburse that fund for the proportionate share of the works already built. Let us suppose, for example, that there are now 70,000 acres served under the existing project, to which the whole cost is charged. When these 40,000 acres in the mesa unit are added to the entire project, then four-elevenths of the cost of the works heretofore constructed will be charged to this new unit and paid for in cash.

Mr. BORLAND. The only difference between this plan that the gentleman has evolved and the present reclamation law is that under the present law we retain some sort of a lien on the land for the cost of the project paid in 20 annual payments, and under this it is equal to the purchase price.

Mr. HAYDEN. Yes. That is the plan.

Mr. BORLAND. The Government sells the land and the purchase price received goes into the project. But suppose the Government sells a portion, say, 25 or 40 per cent, of the available public land in the 40,000 acres on the mesa. In doing so it pledges its faith to this portion that it will construct the auxiliary work. Suppose there is not a ready market for the remaining 60 or 75 per cent, how is the auxiliary work to be constructed?

Mr. HAYDEN. If the Government does not receive enough money to entirely construct the works, then the money is to be returned to the people who bid, and nothing is accomplished.

Mr. BORLAND. Does the gentleman contemplate that one sale is going to dispose of the whole 40,000 acres?

Mr. HAYDEN. Yes; one sale should be all that is required.

Mr. BORLAND. Within the limited time?

Mr. HAYDEN. Yes; within six months after the Secretary of the Interior estimates the cost and announces that the land is for sale, and if he does not get money enough to do the work all the money so far paid in is to be returned.

Mr. BORLAND. Is that in the bill?

Mr. HAYDEN. Yes.

Mr. BORLAND. Where is it?

Mr. HAYDEN. In section 2:

In case the bids for the lands shall not aggregate a sufficient amount within six months from the time fixed for the filing of bids to meet the probable cost as announced, all deposits shall be returned.

Mr. BORLAND. The gentleman is confident that the land will find a ready market.

Mr. HAYDEN. I am.

Mr. BORLAND. I have seen the land. I realize that it is supposed to be good for citrus fruit.

Mr. HAYDEN. It is, and within eight hours' ride on the railroad of the great citrus-fruit country of southern California.

Mr. BORLAND. Yes; and quite in demand for oranges. Let me ask the gentleman why is it that he places the limit at 160 acres to each purchaser?

Mr. HAYDEN. That is the limit fixed in the reclamation law.

Mr. BORLAND. But that is subject to the discretion of the Secretary of the Interior.

Mr. HAYDEN. And so it is in this bill, not to exceed 160 acres. The gentleman will find that in line 7, page 1:

And sell, in tracts of not more than 160 acres to any one purchaser.

Mr. BORLAND. Does the gentleman think that under that the Secretary can offer it in tracts of 40 acres?

Mr. HAYDEN. Yes; in tracts of 5 acres, 20 acres, or 40 acres.

Mr. BORLAND. The gentleman will realize that heretofore there has been a great temptation for a man to take up more land for irrigation than he could profitably work.

Mr. HAYDEN. The thought of the committee was that in selling the lands close to the town of Yuma and the railroad that such lands would bring a greater price if divided into small tracts. Lands at a greater distance, down by the Mexican border, might be sold in tracts as large as 160 acres, but that is all within the discretion of the Secretary of the Interior.

Mr. BORLAND. I think the gentleman is not quite accurate about that. I doubt whether the language "not to exceed 160 acres to any one person" leaves it in the discretion of the Secretary of the Interior. It might be claimed that the purchaser had the right to buy any number of acres up to 160.

Mr. HAYDEN. So far as I know, it is the intention of the Interior Department to sell much of this land in small tracts. If the gentleman thinks it would improve the bill to add the words "within the discretion of the Secretary of the Interior," I shall not object.

Mr. BORLAND. I think it would. I want to say to the gentleman in charge of the bill that, in my judgment, this may be an isolated case where his plan will work. It will work if the gentleman is right in saying that the bidders are ready to take approximately the whole 40,000 acres.

Mr. HAYDEN. I think it will work well on this project.

Mr. BORLAND. What is going to be the attitude of the bidders in case the gentleman is disappointed and the project does not work?

Mr. HAYDEN. Then they will have their money paid back to them.

Mr. BORLAND. I want it made very clear. I do not want it started as a reclamation project and have the faith of the Government pledged to its continuation.

Mr. HAYDEN. The Government is not bound to continue the work. To make it clear that the Government is not obligated to do that we state that if enough money is not received the amount collected shall be returned. And we state further that when the purchasers or owners do agree to make payments for the reclamation of their land they shall pay the total actual cost of the new work, if it is in excess of the estimated cost, and the proportionate cost per acre of the work previously constructed and available for the land.

Mr. BORLAND. Mr. Speaker, we are under obligation to build a large number of reclamation projects, and such money as is available ought to be devoted to completing those projects already begun, but it seems to me that if these people are locally able to take care of this situation they ought to have an opportunity to try it. With the assurance of the gentleman from Arizona that if the scheme failed they will have no demand on the reclamation fund to continue it, I think they ought to try it. I shall not object.

Mr. MOORE of Pennsylvania. Mr. Speaker, reserving the right to object, I would like to ask the gentleman from Arizona as to the value of the land involved in this transaction?

Mr. HAYDEN. It is absolutely valueless without water. With water it is valuable citrus-fruit land.

Mr. MOORE of Pennsylvania. Who built the canal to which reference is made?

Mr. HAYDEN. The canal from which water will be pumped has been constructed by the United States Reclamation Service.

Mr. MOORE of Pennsylvania. The Government furnishes the capital for this enterprise of 40,000 acres?

Mr. HAYDEN. No; the purchasers of these lands advance all the money.

Mr. MOORE of Pennsylvania. But the Government puts up the land as a basis for the entire operation.

Mr. HAYDEN. Of course, if there was no land, there could not be an irrigation project.

Mr. MOORE of Pennsylvania. What would be the value of the land after it was irrigated?

Mr. HAYDEN. It is worth the cost of reclamation at least, which I imagine will be about $100 an acre.

Mr. MOORE of Pennsylvania. Four hundred thousand dollars? I did not hear accurately.

Mr. HAYDEN. Four million dollars.

Mr. MOORE of Pennsylvania. Four million dollars is the estimated value of the land when it is properly irrigated?

Mr. HAYDEN. When it is properly irrigated, cultivated, and the purchasers have expended their money and time upon it.

Mr. MOORE of Pennsylvania. But the Government furnishes the basis of that investment by contributing the land? That is what I want to know.

Mr. HAYDEN. Yes.

The SPEAKER. Is there objection to the present consideration of the bill? [After a pause.] The Chair hears none. The gentleman from Arizona asks unanimous consent to substitute the bill S. 5718, of similar tenor, for the House bill and to consider the Senate bill. Is there objection?

There was no objection.

The SPEAKER. This bill is on the Union Calendar.

Mr. HAYDEN. Mr. Speaker, I ask unanimous consent to consider the bill in the House as in Committee of the Whole.

The SPEAKER. Is there objection?

There was no objection.

The SPEAKER. The bill has been read. The Clerk will read the committee amendments.

The Clerk read as follows:

Page 2, line 4, strike out the following language: "That appurtenant water rights for lands in private ownership may be sold for not to

exceed 160 acres to any one person, at a price which shall not be less than the highest price per acre paid for public land sold under the provisions of this act, payment thereof to be made under the same terms as for public land under the provisions of section 2," and insert in lieu thereof the following: "That appurtenant water rights for lands in private ownership may be sold for not to exceed 160 acres to any one person at a price equal to the estimated cost per acre of the works to be constructed plus the proportionate cost per acre of the works previously constructed and available for the lands if any there be, payment to be made under the same terms as for public land under the provisions of section 2."

The SPEAKER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The SPEAKER. The Clerk will report the next amendment.

The Clerk read as follows:

Page 3, lines 23 and 24, strike out the words "or have declared his intention to become such citizen."

The SPEAKER. The question is on agreeing to the committee amendment.

The question was taken, and the amendment was agreed to.

The SPEAKER pro tempore (Mr. BYRNS of Tennessee). The Clerk will report the next amendment.

The Clerk read as follows:

Page 4, after the word "land," insert: "*Provided*, That any person who has made an entry which is now valid and subsisting, or who has a preference right to make entry for any irrigable land embraced within the limits of the auxiliary project, may purchase said land at the price of $2.50 per acre and shall be subject to the same payments for the irrigation works as is required of persons holding private lands under the provisions of section 1 hereof: *Provided further*, That the purchasers or owners of the land to be irrigated under said auxiliary reclamation project shall also agree to pay to the United States the total actual cost of the works of said auxiliary reclamation project in the event that the actual cost of said works shall exceed the estimated cost thereof.

The SPEAKER pro tempore. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The SPEAKER pro tempore. The question is on the third reading of the Senate bill.

Mr. BORLAND. Mr. Speaker, I offer an amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 1, line 8, after the word "purchaser," insert the words "in the discretion of the Secretary of the Interior."

Mr. MANN. Does the gentleman mean to say that he is willing to give the Secretary of the Interior authority to sell more than 160 acres of this land to one person?

Mr. BORLAND. No; that is not the intention. The intention is to give him discretion to sell in tracts of less than 160 acres each. I am not at all clear that I have reached that purpose.

Mr. MANN. This authorizes the Secretary of the Interior to prescribe tracts of less than 160 acres now, or of not more than 160 acres. The gentleman's amendment will provide not more than 160 acres, in the discretion of the Secretary of the Interior, which would allow him to sell 10,000 acres in one tract. As the bill is now, this is authority to grant not more than 160 acres, and he can make it 40 acres or 10 acres, and I suppose very often it will be 40 or 80 acres.

Mr. BORLAND. Mr. Speaker, it struck me that the Secretary of the Interior would be authorized to receive bids from these private individuals for any sized tract up to 160 acres, but that language did not vest in the Secretary of the Interior the right to offer the land in tracts of less size, but authorized him to accept bids up to that sized tracts. What the gentleman has spoken of is what we desire to accomplish.

Mr. MANN. I take it that this is what will be done, though the gentleman from Arizona [Mr. HAYDEN] may know better than I in that respect. The Secretary sets aside certain of these lands, and will indicate the size of the tracts which will be sold. That is the authority given him here, but in any case he must not sell more than 160 acres to an individual.

Mr. HAYDEN. That, I understand, is the purpose of the department.

Mr. STAFFORD. The gentleman could obtain his purpose by an amendment along these lines: After the word "tract" insert the language "of varying size, in the discretion of the Secretary of the Interior, but of not more than 160 acres to any one purchaser."

Mr. BORLAND. I had that in mind.

Mr. MANN. I think that is exactly what this means.

Mr. BORLAND. I was going to insert there, after the word "tracts," the words "that he may determine," so as to make it read:

That the Secretary of the Interior is hereby authorized to set apart any lands in the State of Arizona—

And so forth—

and sell in tracts he may determine, of not more than 160 acres—

And so forth.

Mr. MANN. After all, that is what the original language means.

Mr. BORLAND. I think it is well to put it in there, because the temptation is always to bid for the largest amount of land that the Government can be induced to sell.

The SPEAKER pro tempore. The question is on agreeing to the amendment offered by the gentleman from Missouri.

Mr. BORLAND. Mr. Speaker, I ask unanimous consent to amend my amendment and to offer in its place the following.

The SPEAKER pro tempore. The gentleman from Missouri asks unanimous consent to withdraw his amendment and offer another. Is there objection?

There was no objection.

The SPEAKER pro tempore. The Clerk will report the amendment offered by the gentleman from Missouri.

The Clerk read as follows:

Page 1, line 7, after the word "tracts," insert the words "of such size as he may determine," so that the line as amended will read: "and sell in tracts of such size as he may determine, of not more than 160 acres," etc.

The SPEAKER pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the third reading of the Senate bill.

The bill was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. HAYDEN, a motion to reconsider the vote by which the bill was passed was laid on the table.

A similar House bill (H. R. 14825) was, by unanimous consent, laid on the table.

UNCLAIMED BANK DEPOSITS, DISTRICT OF COLUMBIA.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 16070) to dispose of unclaimed bank deposits in the District of Columbia, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. MANN. Mr. Speaker, I object.

The SPEAKER pro tempore. The gentleman from Illinois objects, and the Clerk will report the next bill.

BALANCE DUE LOYAL CREEK INDIANS, ETC.

The next business on the Unanimous Consent Calendar was the bill (H. R. 9326) to pay the balance due the Loyal Creek Indians on the award made by the Senate on the 16th day of February, 1903.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. JOHNSON of Kentucky. Mr. Speaker, I object.

Mr. HASTINGS. Mr. Speaker, I ask unanimous consent that the bill remain on the calendar without prejudice.

The SPEAKER pro tempore. The gentleman from Oklahoma asks unanimous consent that the bill be passed over without prejudice. Is there objection? [After a pause.] The Chair hears none.

REPUBLIC COAL CO.

The next business on the Calendar for Unanimous Consent was S. J. Res. 50, authorizing the Secretary of the Interior to sell the coal deposits in and under certain public lands to the Republic Coal Co., a corporation.

The SPEAKER pro tempore. Is there objection to the consideration of the joint resolution?

Mr. HILLIARD. Mr. Speaker, I am disposed to object, but I reserve the right to object.

Mr. STOUT. Mr. Speaker, I understand the gentleman reserves the right to object. Mr. Speaker, I desire to explain the purpose of this little joint resolution for the benefit of the gentleman from Colorado and others who may be interested. The joint resolution provides, in brief, that the Republic Coal Co., which is a subsidiary company of the Chicago, Milwaukee & St. Paul Railroad Co., may lease 640 acres of this land. This joint resolution provides for a greater amount of land than that, but I have an amendment which I propose to introduce which will cut it down to 640 acres, making it the same size tract as any association of private individuals can take up under the present law.

As we all know when the original railroads were built through that western country a number of them were given vast tracts of coal lands and others had opportunities to acquire great quantities of coal lands at very reasonable figures or at no figure at all. When the Chicago, Milwaukee & St. Paul Railroad was built through from the Missouri River to the Pacific coast all the avenues for the acquisition of coal lands by railroads

had been closed. The only way that they could get coal lands was to purchase them from their competitors and their competitors were naturally very loath to sell to any railroad company. This company finally did get control of 640 acres of land. It expended $850,000 to $1,000,000 in the development of that coal. That is the only source of coal between the Missouri River and the Pacific coast, and naturally that little tract of coal land has now been exhausted, and this bill gives them the privilege of leasing—it was originally sale and purchase—but it is a lease upon terms to be fixed by the Secretary of the Interior. This additional 640 acres of land immediately joins that which they have about worked out. Now, the facts are these: This coal is of low quality steam coal. We are compelled to use it in the section of the country where I reside. We get coal from this little camp where this mine is located. This railroad company, if it can not get coal from its own mine, will be compelled to purchase coal from independent mines of which there are three or four in the camp. That will necessarily, as it has done this year, produce a coal famine in that part of the State. My own town, a little city of 8,000 people, has been face to face with a coal famine for the last five months, and I think this would relieve the situation a good deal. At least this railroad company could get its coal and permit these independent companies to use their entire output for the supply of domestic needs. I can see no possible objection to this bill in any sense of the word. It is not giving this railroad company any special advantage because, as I say, any four citizens, the gentleman from Colorado, two other gentleman, and myself, could go there and take this land under very much more advantageous conditions than the railroad company is permitted under this bill, but we would not do it for the reason that the coal is 350 feet deep and it would cost, as competent engineers have reported, $300,000 to put down a shaft so it would produce in paying quantities. The railroad has its machinery in there. Its shafts and tunnels are right there. It has $850,000 worth of machinery ready to work and it can get out this coal more economically than it can be extracted by any other corporation or individual under these conditions. The fact that the railroad company has got to have coal, the fact if it does not get it in this manner it has got to purchase and thereby inflict a hardship upon the communities near the property, and perhaps 150,000 people around there are supplied from this camp, I think makes it in the interest of public policy that this measure should become the law, and in the light of this statement I trust the gentleman from Colorado, who is a man from the West and understands the conditions out there, will see fit to withdraw his objection.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. HILLIARD. Mr. Speaker, I regret very much I am not able to come to the conclusion of my distinguished friend from Montana [Mr. STOUT], who is so persuasive that if this land were mine I would quickly give it to the railroad company. But it is not mine, and I am familiar with the West. I know how the railroad companies have grabbed all the coal lands out there. The fact that the Chicago, Milwaukee & St. Paul Railroad did not get as much as the Union Pacific, as the gentleman states, is no reason why it should now get some land upon terms upon which neither he nor I could get land out there. This is simply an act for the purpose of giving the railroad a chance to get the land which neither the gentleman nor myself could get under the terms proposed to be given to the railroad company.

Mr. DYER. Mr. Speaker, regular order.

Mr. HILLIARD. Mr. Speaker, I object.

The SPEAKER pro tempore. The gentleman from Colorado objects.

FLANDREAU BAND OF SIOUX INDIANS.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 13165) authorizing the Flandreau Band of Sioux Indians to submit claims to the Court of Claims.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. DILLON. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER pro tempore. The gentleman from South Dakota asks unanimous consent that the bill be passed over without prejudice. Is there objection? [After a pause.] The Chair hears none.

The Clerk will report the next bill.

RECLAMATION OF ARID LANDS IN NEVADA.

The next business on the Calendar for Unanimous Consent was the bill (S. 2519) to encourage the reclamation of certain arid lands in the State of Nevada, and for other purposes.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. LENROOT. Mr. Speaker, reserving the right to object, I desire to submit a unanimous-consent request that this bill be committed to the Committee on Public Lands. I do that with the consent of the author of the bill.

The SPEAKER pro tempore. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

The Clerk will report the next bill.

TREATY OF WASHINGTON.

The next business on the Calendar for Unanimous Consent was the bill (S. 649) making appropriations for expenses incurred under the treaty of Washington.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. STAFFORD. Mr. Speaker, I object.

The SPEAKER pro tempore. The gentleman from Wisconsin objects, and the Clerk will report the next bill.

CLAIMS OF STATE OF NORTH CAROLINA.

The next business on the Calendar for Unanimous Consent was the bill H. R. 3654, to authorize the Secretary of the Treasury to audit and adjust certain claims of the State of North Carolina.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. POU. Mr. Speaker——

Mr. STAFFORD. Mr. Speaker, I reserve the right to object.

Mr. POU. Mr. Speaker, I would like to make a short explanation of this bill. The various States of the Union made contributions providing for the military indebtedness of the Government in prosecuting the War of 1812. All of the States which made these contributions have had a settlement with the Government except the State of North Carolina. Now, I do not know whether the Government owes the State of North Carolina anything, or whether my State owes the Government. But the matter ought to be ascertained, and this bill only provides that the accounts shall be audited. There is no appropriation carried in the bill, and the matter ought to be settled at some time or other.

Mr. MANN. There is no appropriation carried in this bill. If there is, it is buried in the claim, and it would require an appropriation, of course, in a deficiency bill, if the claim is approved. It authorizes the auditing of a claim, which claim, when audited, is paid as a matter of course without controversy through a deficiency bill.

Mr. POU. I did not understand that there was any appropriation. It was not so intended, and I am willing to have it amended.

Mr. MANN. There is no appropriation directed, but it authorizes the auditing of a claim. These claims when audited are paid through the deficiency bill, just like judgments against the Government, without controversy and without consideration except just nominally.

Mr. POU. I am willing to have the bill amended.

Mr. MANN. And I am not saying that is an improper course.

Mr. POU. In view of the fact that a similar settlement has been had with almost every other State, and, I believe, with every other State, it would seem that North Carolina ought to have its account audited.

Mr. MANN. North Carolina has been so modest and has held itself under such self-restraint that it has waited for more than 100 years to present this claim. Is not the gentleman afraid of its losing its self-restraint?

Mr. POU. I shrug my shoulders, too.

Mr. STAFFORD. Mr. Speaker, I took occasion last session to go over this bill and the report very carefully, and also the copy of the brief prepared by the attorney for the claim in this case. There is a great difference between the claim of North Carolina, as set forth in this case, and the claims of the other States. I shall be constrained to object to its consideration, but have no objection to the bill retaining its place on the calendar, if the gentleman will make the request.

Mr. POU. I am much obliged to the gentleman for granting that small favor.

The SPEAKER pro tempore. Does the gentleman object?

Mr. DYER. I think the gentleman from North Carolina wanted the bill to remain on the calendar without prejudice.

Mr. POU. Yes.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. POU] asks unanimous consent that the bill be passed over without prejudice. Is there objection? [After a pause.] The Chair hears none.

RETIREMENT PAY OF JUDGES IN TERRITORIES.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 11152) to provide retirement pay in certain cases for judges of the United States district courts in the Territories.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. COX. Mr. Speaker, reserving the right to object——

Mr. DYER. I object.

TABLET IN MEMORY OF COL. DAVID DU B. GAILLARD.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 15076) granting to the widow of Col. David Du B. Gaillard authority to place, in his memory, a tablet in the Memorial Amphitheater at Arlington, Va.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. MANN. I will ask to have the bill passed over without prejudice.

The SPEAKER pro tempore. The gentleman from Illinois asks unanimous consent that the bill may be passed over without prejudice. Is there objection?

There was no objection.

BATTLEFIELD OF GUILFORD COURT HOUSE.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 8229) to establish a national military park at the battle field of Guilford Courthouse.

The title of the bill was read.

The SPEAKER pro tempore. Is there objection?

Mr. STAFFORD. I object.

The SPEAKER pro tempore. The gentleman from Wisconsin objects.

Mr. STEDMAN. I ask unanimous consent, Mr. Speaker, that the bill be passed over without prejudice.

The SPEAKER pro tempore. The gentleman from North Carolina asks unanimous consent that the bill be passed over without prejudice. Is there objection?

There was no objection.

ABANDONMENT OF PINEY BRANCH ROAD.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 12035) to provide for the abandonment of Piney Branch Road between Allison Street and Buchanan Street NW., in the District of Columbia.

The title of the bill was read.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. MANN. I object.

The SPEAKER pro tempore. The gentleman from Illinois objects.

METROPOLITAN POLICE, DISTRICT OF COLUMBIA.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 10926) to amend an act approved June 8, 1906, entitled "An act to amend section 1 of an act entitled 'An act relating to the Metropolitan police of the District of Columbia,' approved February 28, 1901."

The title of the bill was read.

Mr. JOHNSON of Kentucky. Mr. Speaker, the gentleman from Georgia [Mr. VINSON] has charge of this bill, and he is necessarily absent from the floor for a moment. I ask unanimous consent that it be passed over without prejudice.

The SPEAKER pro tempore. The gentleman from Kentucky asks unanimous consent that the bill be passed over without prejudice. Is there objection?

There was no objection.

DONATION OF LAND TO THE CITY OF ST. AUGUSTINE, FLA.

The next business on the Calendar for Unanimous Consent was the bill (S. 3699) to donate to the city of St. Augustine, Fla., for park purposes the tract of land known as the Powderhouse Lot.

The title of the bill was read.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. STAFFORD. I object.

Mr. SEARS. Mr. Speaker, will the gentleman withhold his objection for a moment?

Mr. STAFFORD. I do.

Mr. SEARS. I was wondering whether, if I were to move an amendment on page 2, line 5, after the word "purposes," making it read "or if the Government should decide to use said lands for public buildings or military purposes," that would not meet the gentleman's objection?

Mr. STAFFORD. I will state to the gentleman, as I said when this bill was last under consideration, that my objection is fundamental in that I believe it should not be the policy of the Government, when it has no further need of public land, to donate it to a municipality or to the public. The policy pursued in the case of public buildings no longer needed for public-building purposes, where a municipality wishes to take over the building, has been for the Government to sell it to the municipality at a reasonable price.

Mr. SEARS. If the Government prefers to take this back, should not the Government be allowed to do it, and in the meantime let the municipality improve it?

Mr. STAFFORD. I am perfectly willing to give the preference to the municipality, but the land should not be given away.

Mr. MANN. Mr. Speaker, will the gentleman from Wisconsin yield for a moment?

Mr. STAFFORD. I shall be glad to yield.

Mr. MANN. Has the gentleman taken into consideration the fact that this is the oldest settlement in the United States and that always we "young people" owe a little to age? I am reaching that period myself where I sometimes think some people owe a little to age, although I am afraid I have had very little respect myself at times for age in the past.

Here is the oldest city in the country, the oldest settlement in the country, filled with history and romance. It never has asked very much from the Government, although it has contributed largely to the people of all the country through its history and through the romances connected with it.

They can not afford to buy the land, probably. I suppose there are more people go to St. Augustine because of the age of the city and its historical connections than go to any other locality in the United States. I went there myself once or twice just because of that fact. We spend a considerable amount of money in our parks, national parks, and in our local parks. We really expend the money for the benefit of the sightseers. We spend a very large sum of money in Washington—not as large as I would like to see spent—for the benefit of those who come here. We spend nothing in St. Augustine, the father of the country in a way, the mother of the country in a way—the beginning of the country.

Why not, in deference to what they are doing for our visitors who go there, give them a little land which is of no value to us, but which they will fix up and make of value to everybody who goes there? [Applause.]

Mr. STAFFORD. Mr. Speaker, the appeal made by the gentleman is quite potent, and yet I can not see any reason why we should make any exception in dealing with this city. If our tourists go there, certainly they go there with their money to contribute to the business and support of the city. As I said on other occasions, I do not see any reason why we should not give the preference to this municipality, but I can not see any reason why we should make an exception in this case. Therefore I object.

Mr. SEARS. If I should offer an amendment to the effect that the land should revert to the Government, will the gentleman object?

Mr. STAFFORD. I have no objection to its going over for two weeks. In the meantime I will give it my further consideration.

Mr. SEARS. I thank the gentleman from Illinois [Mr. MANN] for his expression in behalf of this bill, and in the meantime, Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER pro tempore. The gentleman from Florida asks unanimous consent that the bill be passed over without prejudice. Is there objection?

There was no objection.

LANDS WITHIN THE BLACKFEET INDIAN RESERVATION, MONT.

The next business on the Calendar for Unanimous Consent was the bill (S. 793) modifying and amending the act providing for the disposal of the surplus unallotted lands within the Blackfeet Indian Reservation, Mont.

The title of the bill was read.

The SPEAKER pro tempore. Is there objection?

Mr. JOHNSON of Kentucky. I object, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Kentucky objects. The bill is stricken from the calendar.

Mr. EVANS. Mr. Speaker, I ask unanimous consent that this bill be permitted to remain on the calendar without prejudice.

The SPEAKER. The gentleman from Montana asks unanimous consent that this bill be permitted to remain on the calendar without prejudice. Is there objection?

There was no objection.

PUBLIC-SCHOOL BUILDINGS IN THE DISTRICT OF COLUMBIA.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 14816) to provide for the use of public-

school buildings in the District of Columbia as community forums, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. McCLINTIC. Mr. Speaker, I object.

The SPEAKER. The gentleman from Oklahoma objects. The bill will be stricken from the calendar.

Mr. RAKER. Mr. Speaker, I ask unanimous consent that the bill may retain its place on the calendar and be passed over without prejudice.

The SPEAKER. The gentleman from California asks unanimous consent that the bill may be passed over without prejudice. Is there objection?

There was no objection.

ACTIONS UNDER INTERSTATE COMMERCE ACT.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 16733) to amend the act entitled "An act to regulate commerce," approved February 4, 1887, as heretofore amended, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

There was no objection.

The bill was read, as follows:

Be it enacted, etc., That section 6 of an act entitled "An act to regulate commerce," approved February 4, 1887, as heretofore amended, be further amended by inserting between the seventh and eighth paragraphs thereof the following paragraph:

"All actions by carriers subject to this act for the recovery of all or any part of the schedule charges for any service subject to this act shall be begun within three years from the time the cause of action accrued, and not after: *Provided, however*, That any such action may be brought at any time prior to January 1, 1917, if such action would not then have been barred by some statute of limitations except for this act. Nothing in this paragraph shall be construed as changing in any way the duty of a carrier to promptly demand and collect its lawful charges or as relieving it from any liability or penalty for failure so to do."

SEC. 2. That the last sentence of the second paragraph of section 16 of said act to regulate commerce reading as follows: "All complaints for the recovery of damages shall be filed with the commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court or State court within one year from the date of the order, and not after," shall be amended to read as follows:

"All complaints for the recovery of damages shall be filed with the commission within two years from the time the cause of action accrues, and not after, unless the cause of action shall have accrued in respect of or in connection with some service subject to this act done or undertaken to be done by a carrier subject to this act, for which the carrier shall have begun action for the recovery from the complainant of all or any part of the schedule charges after said two years shall have expired or within 90 days before the expiration of said two years, in either of which cases his complaint may be filed with the commission within 90 days after such action shall have been begun by the carrier, and not after.

"A petition for the enforcement of an order for the payment of money shall be filed in the district court or State court within one year from the expiration of the time limit set for the payment in the order, and not after."

Mr. ESCH. Mr. Speaker, neither the author of this bill nor the member of the committee who reported it is present at this moment. Three separate measures were introduced and referred to the Committee on Interstate and Foreign Commerce, and were by that Committee submitted to the Interstate Commerce Commission. The result is the bill before you. The Interstate Commerce Commission has in its last three or four annual reports, as I understand it, recommended provisions along these lines. In the present statute I understand there is no limitation as to time of the right of the carrier to bring its action for the recovery of undercharges. This fixes a limit of three years on claims of that kind. The testimony before the committee was that there were many cases instituted by common carriers on claims for undercharges after the lapse of three, four, five, and even six years. This will remedy that evil.

Mr. BARKLEY. Mr. Speaker, the chairman of the Committee on Interstate and Foreign Commerce [Mr. ADAMSON] has stepped out of the Hall temporarily. He is very anxious that this bill shall be passed at this time. As the gentleman from Wisconsin [Mr. ESCH] says, it has been recommended by the Interstate Commerce Commission, and was unanimously reported by the committee, and I believe it ought to be enacted.

Mr. STEENERSON. I should like to ask the gentleman from Wisconsin a question. I move to strike out the last word. From the reading of the bill as I caught it, it fixed the date of January 1, 1917, which date has already passed. Should not that be changed?

Mr. ESCH. I move to amend that by making it March 4, 1917. The bill was reported to the House prior to the date set forth in that paragraph.

Mr. STEENERSON. Might it not be better to make it March 5, so as to have it after the passage of the act?

Mr. ESCH. I will act on that suggestion. I move to amend by striking out in line 2, page 2, the words "January 1" and inserting in lieu thereof "March 5."

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Amend, on page 2, in line 2, by striking out "January 1" and inserting "March 5."

Mr. MANN. Mr. Speaker, the gentleman from Wisconsin [Mr. ESCH] is as well posted on matters of this sort as anyone in the House, but I am inclined to think the gentleman overlooks the purpose of this provision. A bill of this sort ought to be explained. The amendment offered by the gentleman from Wisconsin is not the amendment he wants to propose. This bill undertakes to limit the time within which a suit can be brought by a railroad company for the recovery of certain schedule charges, and provides for a limitation of time within which such action shall be commenced—within three years from the time the cause of action accrued. I believe that that is a reduction of the time, although I am not certain. Then follows a provision, provided, however, regardless of the limitation of three years, that the action may be brought before January 1, 1917. That is for the purpose of not cutting out anybody.

Now, if this bill becomes a law, in all probability it will not become a law before March 4, and it would be useless to give the right to bring an action by March 5 which could not already be brought within the three-year limitation, because no attorney, agile though he might be, would be able to get his clients into court by March 5.

Mr. ESCH. I am willing to accept any suggestion that the gentleman may make.

Mr. MANN. Am I not correct about that?

Mr. ESCH. Yes; I think the gentleman's point is well taken.

Mr. STEENERSON. They ought to have 60 days, anyway.

Mr. ESCH. Of course the President might not sign this by the 5th of March.

Mr. MANN. Oh, yes; this is the short session, and he must sign it before March 5 or it will not become a law. If you are going to extend the right to bring the action contemplated, you ought to give a substantial time within which the action may be brought. I think this bill was drawn by the Interstate Commerce Commission. I know they are interested in its passage, it being designed to rectify discrepancies between the rights of the railroad companies and of the shippers.

Mr. ADAMSON. The bill was drawn in conformity with their wishes.

Mr. MANN. The date was fixed as January 1, 1917, when the bill was introduced in June, 1916. If I were changing it, I should fix it at July 1, 1917.

Mr. ADAMSON. I agree with the gentleman from Illinois. I think that ought to be done.

Mr. ESCH. I accept that amendment.

The SPEAKER. What is the amendment?

Mr. ESCH. Strike out "January" in line 2, page 2, and insert "July."

The SPEAKER. The gentleman from Minnesota [Mr. STEENERSON] withdraws his pro forma amendment, and the gentleman from Wisconsin [Mr. ESCH] withdraws his amendment and offers another, which the Clerk will report.

The Clerk read as follows:

On page 2, line 2, strike out "January" and insert "July."

The amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time, and was accordingly read the third time and passed.

On motion of Mr. ADAMSON, a motion to reconsider the last vote was laid on the table.

NATIONAL SOCIETY UNITED STATES DAUGHTERS OF 1812.

The next business on the Calendar for Unanimous Consent was House joint resolution 230, authorizing the National Society of United States Daughters of 1812 to file its historical material in the Smithsonian Institution and to make annual report to the secretary thereof.

The SPEAKER. Is there objection?

Mr. STAFFORD. Reserving the right to object, I notice from the report of Secretary Walcott that he criticizes the general purpose of this bill, claiming that the Institution has not file space to take care of the archives of this organization. What was the moving cause of the committee in reporting this bill in opposition to the adverse report by the secretary?

Mr. MAPES. Mr. Speaker, I think if the gentleman from Wisconsin will read the letter of Mr. Walcott more carefully he will find that his objection is not on the ground that there is

not sufficient room, but on the ground that it would cause a little more editorial work for the officials of the Institution.

Mr. STAFFORD. Will the gentleman yield?

Mr. MAPES. Yes.

Mr. STAFFORD. I might reply in kind, that if the gentleman from Michigan would read the letter more carefully he would not make that retort. I call the gentleman's attention to that portion of the letter upon which I predicated my statement:

I desire further to state that the Institution has not the facilities to provide exhibition or storage space for the great mass of books, manuscripts, and other material which might be expected were a number of societies authorized to deposit their collections here.

Mr. MAPES. Yes; he says, "A number of societies being authorized to deposit their collections." We are only asking for one. Mr. Walcott is anticipating that a lot more will ask for the same opportunity. I will say to the gentleman that the language of this bill contains a clause which is very similar to the language in the bill incorporating the Society of the Daughters of the Revolution. For some reason, when the charter incorporating the Daughters of 1812 was passed, it did not contain the provision that is in the other charter allowing the Daughters of the Revolution to file their valuable historical material with the Smithsonian Institution. This is a similar provision, giving the Daughters of 1812 the same right which the Daughters of the American Revolution now have.

Mr. STAFFORD. Will the gentleman yield?

Mr. MAPES. Yes.

Mr. STAFFORD. I may be in error, but I will ask whether the Daughters of the American Revolution have not the general authority to file their historical matter in the Smithsonian Institution if the secretary deems it of sufficient historical importance? I direct the gentleman's attention to the last paragraph in the secretary's letter, in which he says:

I may add in this connection, however, that the Smithsonian Institution is already authorized by law to receive collections for the United States National Museum from any source and will be glad to place on exhibition any objects which are found to be of sufficient historical importance to warrant such action.

Mr. MANN. Mr. Speaker, the president of this organization is a constituent of mine, Mrs. Robert Hall Wiles, a woman very active in doing historical work, especially in connection with the Daughters of 1812. The gentleman will recall that it was this organization which a year or two years ago was active in connection with the return of a certain Confederate flag to Louisiana, upon which we heard considerable eloquent discussion in the House.

The Smithsonian Institution is, I think, authorized to receive almost any kind of donation that it wants to. I would not be in favor of permanently loading up the Smithsonian Institution Building with old junk of any kind, but here is an organization that is collecting now some very valuable material concerning the War of 1812, which, by the way, just at present is of particular interest in view of our relations with European countries at this time. They have no place in which to preserve this information which they acquire. In the course of time we are going to construct in Washington a hall of archives. I do not know what we are going to put into it. It is in process—I will not say of incubation, because it was incubated some time ago—but there is a movement of some kind. Probably things of this sort will be put in the archives in the end, but the Smithsonian Institution now has a considerable amount of room which may be profitably used for storing any of these documents, if later it may be found that they should be moved away from the Smithsonian Institution.

I think these ladies are doing a very good service to the country, both the Daughters of 1812, the Daughters of the American Revolution, the Daughters of the Confederacy, and various other daughters in collecting information. I feel certain of one thing, that they are doing a great deal more good to our country, to our people, and to womanhood than those misguided, unfortunate-minded people who are engaged now in patrolling the White House. [Laughter and applause.]

Mr. STAFFORD. Will the gentleman yield? I would like to ask the gentleman a question as to the amount of editorial work that is purposed to be imposed on the Institution by the deposit of their various reports year after year.

Mr. MANN. I may say that the editorial work is very little. The reports of the Daughters of the Revolution are now transmitted to Congress. These people will make a report to the Smithsonian Institution. Of course, if it contained a great mass of documents the editorial work would be in cutting them out in making the report to us; that is all. There is no writing to be done, none that calls for editorial work. It is like we receive reports here, sometimes ordering a part of them printed and a part not; it is a very simple process.

Mr. STAFFORD. Mr. Speaker, I am swayed by the statement of the gentleman from Illinois, who has served as a Regent of the Smithsonian Institution for a number of years, and I will take his judgment that it will not cumber up the archives against the judgment of the secretary.

The SPEAKER. Is there objection to the present consideration of the resolution?

There was no objection.

The Clerk read the resolution as follows:

House joint resolution 230, authorizing the National Society United States Daughters of 1812 to file its historical material in the Smithsonian Institution and to make annual reports to the secretary thereof.

Resolved, etc., That the National Society United States Daughters of 1812 is authorized to report its proceedings annually to the Secretary of the Smithsonian Institution, and that the Secretary of the Smithsonian Institution shall communicate to Congress such portions thereof as he may deem of national interest and importance. The Regents of the Smithsonian Institution are authorized to permit said National Society United States Daughters of 1812 to deposit its collection of manuscripts, books, pamphlets, and other material for history in the Smithsonian Institution or in the National Museum, at their discretion, upon such conditions and under such rules as they shall prescribe.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed.

On motion of Mr. MAPES, a motion to reconsider the vote whereby the joint resolution was passed was laid on the table.

UNALLOTTED LANDS OF CREEK INDIANS.

The next business on the Calendar for Unanimous Consent was the joint resolution (S. J. Res. 114) withholding from allotment the unallotted lands or public domain of the Creek Nation or Tribe of Indians, and providing for the sale thereof, and for other purposes.

Mr. FERRIS. Mr. Speaker, I ask unanimous consent, at the request of the gentleman from Oklahoma [Mr. MURRAY], that this resolution be passed over without prejudice.

The SPEAKER. Is there objection?

There was no objection.

FIVE CIVILIZED TRIBES IN OKLAHOMA.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 108) to confer upon the superintendent for the Five Civilized Tribes in Oklahoma the authority now conferred by law upon the Commissioner of Indian Affairs and the Secretary of the Interior respecting lands allotted to the enrolled members of the Five Civilized Tribes and their individual moneys.

The SPEAKER. Is there objection?

Mr. STAFFORD. I object.

Mr. HASTINGS. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. Is there objection?

Mr. STAFFORD. Mr. Speaker, reserving the right to object, I have received letters from the representative of the Indian Rights Association protesting strongly against this bill, and from some others interested in the bill. I am strongly opposed to the bill, and I do not see any purpose to be obtained in keeping it upon the calendar.

Mr. HASTINGS. Mr. Speaker, this is a bill that affects the Five Civilized Tribes in Oklahoma. I venture the assertion, and I make the statement now on the floor of this House, that there is not a single Indian in Oklahoma who is opposed to this bill; and if the gentleman has any letters from any Indians, certainly they are from Indians outside of the State of Oklahoma. I know of no Indian and of no white man who is not in the employment of the United States Government who is opposed to this bill. It is the only bill that has been introduced into this House that meets with the unanimous approval in the State of Oklahoma of every person, white, black, and red.

Mr. STAFFORD. Mr. Speaker, replying to the gentleman's statement, I know and I assert it on my own knowledge that the representative of the Indian Rights Association in this city, Mr. Brosius, is strongly opposed to this bill. I have received letters from a former member of the Committee on Indian Affairs protesting against the bill, and I have received a letter from a person who has Indian blood in him in my own city protesting against the bill. For these reasons, I object.

The SPEAKER. The gentleman from Wisconsin objects to the bill going over without prejudice, and it will be stricken from the calendar.

DENISON COAL CO.

The next business on the Calendar for Unanimous Consent was the bill (S. 1093) to permit the Denison Coal Co. to relinquish certain lands embraced in its Choctaw and Chickasaw coal lease, and to include within said lease other lands within the segregated coal area.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. Mr. Speaker, I object.

Mr. CARTER of Oklahoma. Mr. Speaker, will the gentleman reserve his objection for a moment?

Mr. JOHNSON of Kentucky. I reserve my objection; yes.

Mr. CARTER of Oklahoma. Mr. Speaker, I desire to make a short statement for the benefit of the gentleman from Kentucky. This provides for the taking up of some lands by S. P. Aucker, of the Denison Coal Co., who had originally a coal lease under the firm name of W. C. Fordyce. The land upon which the lease was taken was found to be barren of coal. We passed an act on July 25, 1910, which attempted to rectify that error and to give the man land which had coal underneath it; but on account of an error in the description of the bill, which was introduced by me, the description having been furnished me by the Indian Bureau, the land was not given contiguously. A part of it was described in section 30 when it should have been described in section 32, so that the department could not issue a lease to this man. This poor fellow has paid some nine or ten thousand dollars royalty in advance, which should be applied upon the coal when it is mined; the coal when it is mined will, of course, be distributed among the people there, and the royalties above the nine or ten thousand dollars already paid will be paid into the Treasury for the benefit of the Indians. Subsequent to the time referred to before—I think it was on March 3, 1913—an act was passed which attempted again to rectify the error, but unfortunately that act related only to those people who were at that time operating coal. This gentleman could not operate coal upon his leasehold, because there was no coal there; it was barren of coal. All others in the same situation as this gentleman and his associates have been taken care of, but this poor fellow is left there with his money paid into the Treasury, and he can not get any coal and the Indian can not get any further royalty.

Mr. JOHNSON of Kentucky. Mr. Speaker, I withdraw the objection.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. This bill is on the Union Calendar.

Mr. CARTER of Oklahoma. Mr. Speaker, I ask unanimous consent that it be considered in the House as in Committee of the Whole.

The SPEAKER. Is there objection?

Mr. MANN. Mr. Speaker, reserving the right to object, how long does the gentleman think it will take to consider this bill in the House? Is the consideration of it nearly through?

Mr. CARTER of Oklahoma. So far as I am concerned; yes.

Mr. MANN. I do not object.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. The Clerk will report the bill.

The Clerk read as follows:

Be it enacted, etc., That section 2 of the act of Congress approved June 25, 1910 (36 Stat. L., p. 832), entitled "An act granting to Savanna Coal Co. right to acquire additional acreage to its existing coal lease in the Choctaw Nation, Pittsburg County, Okla., and for other purposes," be, and the same is hereby, amended to read as follows:

"SEC. 2. That the Secretary of the Interior be, and he is hereby, authorized to permit the Denison Coal Co. to relinquish the lands embraced in its existing Choctaw and Chickasaw coal lease, all of which lands have been demonstrated to be not valuable for coal, and to include within the said lease in lieu thereof the following-described lands which are within the segregated coal area and unleased: The southwest quarter of the northeast quarter, and northeast quarter of the northwest quarter, and south half of the northwest quarter, and north half of the southwest quarter, and southwest quarter of the southwest quarter, all in section 6, township 3 north, range 14 east; and south half of the southeast quarter of the northeast quarter, and east half of the southeast quarter, and south half of the northwest quarter of the southeast quarter, and southwest quarter of the southeast quarter, and southeast quarter of the southwest quarter, and south half of the southwest quarter of the southwest quarter, all in section 1, township 3 north, range 13 east; and northwest quarter of the northeast quarter, and north half of the northwest quarter, and southwest quarter of the northwest quarter, all in section 12, township 3 north, range 13 east; and east half of the northeast quarter, and south half of the northwest quarter of the northeast quarter, and southwest quarter of the northeast quarter, and northwest quarter of the southeast quarter, and southeast quarter of the northwest quarter, and north half of the southwest quarter, all in section 11, township 3 north, range 13 east, 960 acres, more or less: *Provided*, That if the surface of said lands has not been sold in accordance with the provisions of the act of February 19, 1912 (37 Stat. L., p. 67), the said Denison Coal Co. shall have the right to use only so much of the surface of said lands as may be reasonably necessary for the purpose of carrying on mining operations, not to exceed 5 per cent of such surface, the number, location, and extent of the tracts to be so used to be approved by the Secretary of the Interior, and said company shall purchase the surface of the tracts so used for mining operations in accordance with section 2 of said act: *Provided further*, That should the surface of said lands have been sold in accordance with the provisions of said act of Congress approved February 19, 1912, the said Denison Coal Co. shall acquire such portions of the surface as may be reasonably necessary for prospecting or for the conduct of mining operations as provided in section 3 of said act: *Provided further*, That the said Denison Coal Co. shall pay all amounts due and unpaid under its existing lease before the said company shall be permitted to include the above-described lieu lands in the lease, and that all moneys which shall have been paid by the said company under its lease as advance royalties shall be credited on the royalty on production from the lieu lands in accordance with the terms of the lease."

The SPEAKER. The question is on the third reading of the Senate bill.

The bill was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. CARTER of Oklahoma, a motion to reconsider the vote by which the bill was passed was laid on the table.

SALARY OF UNITED STATES DISTRICT ATTORNEY, RHODE ISLAND.

The next business on the Calendar for Unanimous Consent was the bill (H. R. 10110) to increase the salary of the United States district attorney for the district of Rhode Island.

The SPEAKER. Is there objection?

Mr. RAKER. Mr. Speaker, I reserve the right to object. I wonder why it is that all of this legislation, not only as regards United States district attorneys, clerks, and marshals, goes to the Committee on the Judiciary, as well as legislation in regard to the salaries of those in the Department of the Interior and clerks in the War Department and the Navy Department. This bill is without the jurisdiction of the Committee on the Judiciary. It belongs to the Committee on Expenditures in the Department of Justice. We have had a good deal of talk here in the last three weeks about the increase in the salaries of the various offices, and it is always made the effort to put them through on an appropriation bill as a rider, or by referring them to committees that have not jurisdiction of that subject. Now, I want to call the attention of the House to this bill. This is the first clean opportunity I have seen for the last three weeks in which to present this question. Subdivision 36 of Rule XI provides—

The examination of the accounts and expenditures of the several departments of the Government and the manner of keeping the same; the economy, justness, and correctness of such expenditures; their conformity with appropriation laws; the proper application of public money; the security of the Government against unjust and extravagant demands; retrenchment; enforcement of the payment of moneys due to the United States; the economy and accountability of public officers; the abolishment of useless offices; the reduction or increase of pay of officers, shall all be subjects within the jurisdiction of the nine standing committees on the public expenditures in the several departments, as follows.

Now, this bill is for the increase of the salary of the district attorney and ought to have gone to the Committee on Expenditures in the Department of Justice. Presumably and possibly under the rule laid down that after a bill has been referred to a wrong committee and a report given by that committee and it is on the calendar it is too late to object, but I wonder whether the author of this bill will object to unanimous consent to rerefer this bill to the Committee on Expenditures in the Department of Justice?

Mr. O'SHAUNESSY. Mr. Speaker, answering the gentleman from California, I would not have any objection to it being referred to that committee were it not for the fact that the matter has been pending for so long a time that to refer it to that committee would be to participate in an act of delayed justice.

Mr. RAKER. This matter has been in my mind for some three months. I have sat here on the floor of this House when hours upon hours of this House's time have been taken up with increases of salaries in various departments, the jurisdiction being either assumed by the Committee on Appropriations, the Committee on the Post Office and Post Roads, or the Committee on Agriculture. Now, the Committees on the Judiciary, on Appropriations, on the Post Office and Post Roads, and on Agriculture already have more legislation before them than they can attend to, of vast importance; with 11 committees of the House fully equipped with clerks and assistants, without a meeting, without work, and without attention, and important matters relating to the jurisdiction of each one of those committees, the opportunity is presented so clearly in this bill where there can be no possibility of question as to jurisdiction, I think the author of the bill ought to send it to that committee having jurisdiction of this matter, not to go into this one subject, but go into all kindred subjects to which this bill relates, not only the salaries of United States district attorneys, but the salaries of marshals, the salaries of clerks, and the salaries of commissioners, and the salaries of clerks in particular where they charge fees instead of getting a lump salary, and other reform legislation in regard to this matter that would give a litigant an opportunity to present his case to the court without being swamped with expenses before he can get before the court for a final hearing. In other words, the law is such that a litigant with little means is absolutely bankrupted by the man with a large sum of money before he can get into these courts, and I hope the gentleman in this instance, while I am in favor of this legislation, will see to it that the committee having jurisdiction of this bill will meet so there will be something definite before them; that the gentleman will yield and permit it to go to that committee so that they may have an opportunity to meet and consider all the conditions that bear upon this question.

Mr. O'SHAUNESSY. Now, does not the gentleman think it would be a very logical thing for me to do to have it referred to any committee, at this time, in order to justify the existence of that committee? Why should I be the vicarious victim of somebody's mistake?

Mr. RAKER. There is no vicarious victim in this matter.

Mr. O'SHAUNESSY. It is all very well for the gentleman to insist upon having a proper reference of bills hereafter, but he should not make me the vicarious victim of somebody's mistake at this time.

Mr. RAKER. It is not the gentleman from Rhode Island, because my regards of him are of the highest, not only as a gentleman but as a lawyer, as a man, and as a legislator, and one who represents his constituents, always here on the job, and nine-tenths of the time right.

Mr. O'SHAUNESSY. I thank the gentleman.

Mr. MANN. How does the gentleman know? Will the gentleman yield?

Mr. RAKER. I will yield.

Mr. MANN. The gentleman has referred to the rule and quoted from paragraph 36 of Rule XI, part of which reads:

> Shall all be subjects within the jurisdiction of the nine standing committees on the public expenditures in the several departments, as follows.

And to show how brilliant and consistent the gentleman from California and his Democratic colleagues are in adopting the rules of the House they say "the nine standing committees as follows" and then enumerate eleven. That is as near as you ever get to the facts.

The SPEAKER. Whatever the reference ought to have been in the beginning, it is too late to raise the question of reference now.

Mr. RAKER. I said that from the decisions.

The SPEAKER. The Chair does not know how it happens these things are referred to the Committee on the Judiciary. The Chair knows he has found it that way, and he expects to leave it that way. Is there objection?

Mr. TAYLOR of Colorado. Mr. Speaker, reserving the right to object, I would like to inquire why this one district attorney should have his salary increased when all the others are not included. Why do you not make a systematic inquiry as to all United States district attorneys and make a horizontal increase for all those that are clearly entitled to it, if any of them are? I am not going to object. The facts may warrant this increase, but there should be a very clear showing made for singling out this one man.

Mr. O'SHAUNESSY. The facts as examined by the Committee on the Judiciary bore out any statement I have made in reference to the bill, that the district attorney of Rhode Island was not proportionately paid; that is, considering the salary of the other district attorneys, his salary was not equal.

Mr. TAYLOR of Colorado. How much does he now get?

Mr. O'SHAUNESSY. Two thousand five hundred dollars, and he gives his whole time and attention to it.

Mr. TAYLOR of Colorado. How much do the other district attorneys get—I mean generally speaking?

Mr. O'SHAUNESSY. I will give that.

Mr. TAYLOR of Colorado. How much more business does the district attorney of Rhode Island have to perform than the other district attorneys throughout the country?

Mr. O'SHAUNESSY. I have the whole thing here.

Mr. TAYLOR of Colorado. Are these facts in the report on the bill?

Mr. O'SHAUNESSY. The report on the bill?

Mr. TAYLOR of Colorado. Yes; does the report on this bill contain the data showing by comparison with the work performed by other district attorneys that this one is clearly entitled to an increase? I doubt the wisdom of this kind of legislation.

Mr. CRAMTON. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman from Michigan rise?

Mr. CRAMTON. If the time of the House is of any value, I expect to save some of it by saying that I intend to object.

Mr. O'SHAUNESSY. Will the gentleman withhold his objection until I state my reason for the bill?

Mr. CRAMTON. Briefly; yes. The report, I will say, however, does not carry any of the information and has not the recommendation of the Department of Justice——

Mr. O'SHAUNESSY. It has.

Mr. CRAMTON. And I am opposed to this class of legislation.

Mr. O'SHAUNESSY. It has the recommendation of the Department of Justice.

Mr. CRAMTON. They state that they do not make a specific recommendation.

Mr. O'SHAUNESSY. They need not make a specific recommendation. We are not splitting hairs on recommendations. The question is whether they recommend it, and they do.

Mr. DYER. Will the gentleman yield?

Mr. O'SHAUNESSY. I will.

Mr. DYER. I will say this is a very meritorious bill, in my judgment. I think it has the unanimous report of the Committee on the Judiciary, and there is no question but that the bill ought to pass.

Mr. O'SHAUNESSY. Now, if the gentleman will permit me for a moment. Quoting from the report of the committee, it says:

> This bill seeks to increase the salary of the district attorney for the district of Rhode Island from $2,500, which is his present salary, to $3,500. The reasons that influenced the committee to make the recommendation are that the business in connection with the district court of Rhode Island has greatly increased in recent years and much important litigation is now pending in the district; that the district attorney is compelled to devote practically his entire time to the duties of his office, and it appears to the committee that $2,500 is inadequate for a lawyer whose ability and attainment would warrant his appointment to such an important position. Furthermore, the present district judge suggests that the salary should be $4,000. The Department of Justice, however, suggests $3,000. The committee has thought it wise to so amend the bill so as to make the salary $3,500.

And the letters of the district judge and the Department of Justice are appended to the report. And let me say to the gentleman that I wrote the district attorney in order to get more detailed information in support of this measure, and he wrote me under date of December 15, 1916:

> Since July 1 the work has not decreased a particle. We are now engaged in a number of matters that tax the utmost capacity of the office, and have as yet been unable to institute all the proceedings that are pending in the office.
>
> The work at present requires practically all the time of the United States attorney and both assistants, and oftentimes it is necessary to have the clerks and attorneys do extensive night work to keep up with the matters on hand.
>
> We have just completed the trial of an important prosecution under the Harrison law, in which we secured the conviction of persons who were the center of the illegal traffic in drugs in this district. The result was due to the very efficient work of Peter C. Cannon in the trial of the case.
>
> This fall the civil work has piled up so that the demands on the office are even greater than during the periods shown on the inclosed reports.

Now, answering the gentleman's questions as to the relative importance of the office and the work done there, I will quote from the annual report of business transacted in the district of Rhode Island for the fiscal year ending July 30, 1916. It says:

> In 1916 there were 36 criminal prosecutions begun; 37 civil cases have been commenced.
>
> The May term of the grand jury, which comes in on the fourth Tuesday in May, will have not less than 10 cases for consideration.
>
> There will therefore be between 50 and 60 criminal prosecutions commenced during the fiscal year 1916.
>
> There are pending in the office at the present time approximately 35 matters in which civil suit should be commenced at once.
>
> Some of these cases involve liability for revenue taxes amounting to $2,000,000.
>
> There are also several suits on internal-revenue bonds, which total over $100,000 in amount.
>
> The criminal prosecutions are important and bitterly contested. The cases in several instances involve the determination of new questions of law, and so involve a large amount of work.
>
> The amount of business in the office has practically quadrupled since October, 1914, as an inspection of files of the office will show.
>
> The increased importance of the military and naval posts in Rhode Island and the addition of an immigration station at Providence have all added to business that requires attention.
>
> Since the 1st of January the office has gotten out approximately 425 pages of brief in various law matters before the district court, besides attending to routine matters.
>
> There are 10 or more cases now awaiting argument in which briefs will have to be written. Consequently it is safe to say that it will be necessary to prepare 250 more pages of brief before June 30, 1916, or the end of the fiscal year.
>
> When the amount of time required to examine authorities, etc., is considered, the enormous amount of time and labor required will become evident.
>
> There seems no immediate prospect of a let up. The work as it stands can not be cleaned up within a year by the present office force working eight hours per day.
>
> During the past year everyone in the office has worked, on the average, from 10 to 12 hours a day, and at long periods the men in the office have worked until midnight and after.
>
> Aside from the actual work in preparing cases, etc., there is necessarily considerable executive work required in directing the work of two assistants, two and sometimes three stenographers, and various special agents and accountants.

And I can go on quoting from this report for the benefit of the gentleman who objects, but I trust that my reading so far will silence his objection to letting this bill go through.

Mr. CRAMTON. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman rise?

Mr. CRAMTON. Mr. Speaker, reserving the right to object, I am one Member of the House who really believes it is time the House took economy as its watchword. I have been doing a great deal of voting that way, and this is the first time I have had anything to say. While this is a small matter, I think it is

typical. The bill comes in without a favorable report from the department. I will read what they say. This is from the Assistant Attorney General:

As compared with other districts, it would seem that $3,000 would be reasonable compensation for the district attorney.

And the committee comes in with a bill for $3,500, $500 more than the department says would be reasonable. It adds:

But the department does not care to make any specific recommendation in the matter.

And the letter from the district judge makes it plain that this district attorney does not give all his time to the duties of the position.

Mr. O'SHAUNESSY. I know he does.

Mr. CRAMTON. But that he is engaged in private practice. He is engaged in private practice; and, furthermore, the report gives no data as to the office.

Mr. O'SHAUNESSY. Will the gentleman yield? May I say to the gentleman——

Mr. STINESS. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman rise?

Mr. STINESS. I ask the gentleman to yield that I may answer his question.

Mr. O'SHAUNESSY. I was gratified when I found the gentleman from Rhode Island had risen in order to enlighten the objector.

Mr. STINESS. I would say, Mr. Speaker and gentlemen, that it was my fortune to hold the office of United States district attorney and this office in question from September 1, 1911, to September 15, 1915, until I came to Congress, and I wish to say that the salary is entirely inadequate for the office.

Mr. CRAMTON. But still my friend will admit that they are getting singularly high-grade men in that position? [Laughter.]

Mr. STINESS. The duties of the office necessitate a man giving all his time to them. I gave practically all of my time to them during the three years I was in the office, and during the time I was in office there were a great many prosecutions started, one against the Atlantic National Bank, where now the president is serving a term in State's prison. That case was finished after I left the office.

There have been a large number of prosecutions for fraudulent voting and things of that kind. Assistants have been granted to the office since I left it. The man who succeeded me was a very good Democrat, a very able man. I got out of the office, and I have no reason to withhold my praise for him and his administration of the office.

I do not think that where we spend the amounts of money that we do here in Congress, giving experimental positions large salaries, we can afford in a district like Rhode Island, taking the whole State, to give a pitiful $2,500 to the United States district attorney. You can not get a man qualified for the office to hold it at that salary.

Mr. TAYLOR of Colorado. Mr. Speaker, will the gentleman yield?

Mr. STINESS. Yes.

Mr. TAYLOR of Colorado. Why does not the Attorney General take up all these salaries throughout the country and make a systematic investigation of them? And if there is a necessity for a raise, why does not the Attorney General make a recommendation for a systematic raise, and raise all of them? Why should we raise only one in a separate bill?

Mr. STINESS. I can not say why the office of the Attorney General does not act. While I was United States attorney I am free to state that the conduct of that office was beyond my comprehension. I want to say in behalf of the man who succeeded me that $2,500 is inadequate for his compensation, and that $3,500 would not be an exorbitant salary. There is no graft in this proposition, and no "pork" of any kind. It is simply to pay a capable man a fair salary.

I hope the objection will not be pressed and that the bill will be passed. [Applause.]

Mr. O'SHAUNESSY. Mr. Speaker, I just wish to answer a question or two about the salaries. In Connecticut, where they have no assistant, the salary is $3,500. In Alabama, Maine, and Vermont it is $3,000, and in Florida it is $3,500. That is the amount recommended in this case.

Mr. MOORE of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. O'SHAUNESSY. Yes.

Mr. MOORE of Pennsylvania. How much is the salary involved here?

Mr. O'SHAUNESSY. We are trying to raise it from $2,500 to $3,500.

Mr. MOORE of Pennsylvania. For a United States district attorney?

Mr. O'SHAUNESSY. Yes.

Mr. MOORE of Pennsylvania. I will mention the fact, merely for the information of the House, that during the consideration of the Agricultural appropriation bill we found in numerous instances that experts and scientists were being paid $3,000 at the dictum of the Secretary of Agriculture, and on the passage of the grain-grading act and the cotton-futures act it developed in the course of inquiries on the subject, that the Secretary, without direction from Congress, fixed the salaries as high as $3,000 for all sorts of men coming into the service, who unquestionably would not have the professional knowledge or the talent of a man capable of filling the office of United States district attorney.

It seems to me that that ought to appeal to the gentleman from Michigan [Mr. CRAMTON] and other Members of the House. If the idea is to hold that a Secretary should report a plan for fixing salaries, we might begin with the Secretary of Agriculture, where Congress is now scarcely consulted at all.

The SPEAKER. Is there objection?

Mr. CRAMTON. I do not know whether my friend desires to refer this matter to the Secretary of Agriculture or not. [Laughter.]

Mr. MOORE of Pennsylvania. I am simply comparing the cases. I do not know anything about the merits of this case at all.

Mr. CRAMTON. This salary was not fixed by the department, but the recommendation from the department, if you are to call it a recommendation, is for a lower salary than we are asked to pass upon here. I know of a woman here in one of the departments performing a work which could not be performed by anybody else in the country—a woman employed in the Treasury Department, who is an expert in deciphering mutilated money, a position of the very highest trust, and she is getting only $1,500 a year, after having been in the employ of the Government for 40 years. Now, I do not propose to consent to have the bill go through here without the necessary data before us, allowing a man to continue in private practice and to raise his salary to $3,500 a year, against the recommendation, as you might call it, of the department under which he serves, and without any data in support of it.

The SPEAKER. Is there objection?

Mr. CRAMTON. I will have to object if the gentleman wants to press it.

Mr. O'SHAUNESSY. I wish to ask the gentleman a question.

A MEMBER. Regular order!

The SPEAKER. The regular order is, Is there objection?

Mr. CRAMTON. I object.

The SPEAKER. The gentleman from Michigan objects.

Mr. O'SHAUNESSY. Will the gentleman accept an amendment from me in the line that the Department of Justice suggests, that it be made $3,000?

Mr. CRAMTON. I do not want to do the man an injustice. We are told positively that this man is worth $3,500 a year. I could not accept that. [Laughter.]

The SPEAKER. Is there objection?

Mr. O'SHAUNESSY. I thank the gentleman from Michigan for his magnanimity. [Laughter.]

The SPEAKER. The gentleman from Michigan [Mr. CRAMTON] objects. The Clerk will report the next bill.

PAY OF COMPOSITORS AND BOOKBINDERS, GOVERNMENT PRINTING OFFICE.

The next business on the Calendar for Unanimous Consent was the bill (S. 6626) to fix the rate of pay for compositors and bookbinders in the Government Printing Office.

The title of the bill was read.

The SPEAKER. Is there objection?

Mr. COX. I object, Mr. Speaker.

The SPEAKER. The gentleman from Indiana objects, and the bill goes off the calendar.

Mr. TAVENNER. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER. The gentleman from Illinois asks unanimous consent that the bill be passed over without prejudice. Is there objection?

There was no objection.

The SPEAKER. The Clerk will report the next bill.

BOARD OF MANAGERS, NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

The next business on the Calendar for Unanimous Consent was the resolution (H. J. Res. 244) for the appointment of four members of the Board of Managers of the National Home for Disabled Volunteer Soldiers.

The title of the resolution was read.

The SPEAKER. Is there objection?

Mr. DOOLITTLE. I object, Mr. Speaker.

The SPEAKER. The gentleman from Kansas objects.

Mr. CANNON. Will the gentleman withhold his objection for a moment?

Mr. DOOLITTLE. I shall have to object.

Mr. CANNON. Object absolutely, without permitting any explanation?

Mr. DOOLITTLE. I will withhold the objection.

Mr. CANNON. Will the gentleman withdraw his objection?

The SPEAKER. No; he says he will withhold it.

Mr. CANNON. This is a unanimous report from the Committee on Military Affairs. The terms of office of these four people expire, and under the law they continue to hold office until their successors are chosen. There is one of these members who was president of the board of managers. On investigation he was shown to be fearfully short of honesty, and, as the evidence shows, willfully, maliciously, and for his profit, mulcted the post fund to the amount of over $45,000 in worthless securities, and he is still a member of that board. He resigned. I am satisfied from the examination that was given that if he had not resigned he would have been removed as president. Now, it seems to me that with a unanimous report from the Committee on Military Affairs this resolution ought to be considered. That is all I have to say.

The SPEAKER. Is there objection?

Mr. BORLAND. Mr. Speaker, I reserve the right to object.

Mr. CANNON. By the way, I ought to have stated that the gentleman was then, and I presume is still, a constituent of the gentleman from Missouri [Mr. BORLAND].

Mr. BORLAND. No; the gentleman is quite wrong about that.

Mr. CANNON. He had his office in the gentleman's district.

Mr. BORLAND. The gentleman to whom the gentleman from Illinois [Mr. CANNON] refers was appointed from the State of Kansas.

Mr. DYER. Kansas City, Kans.

Mr. BORLAND. And is still a resident of Kansas City, Kans.; and, if I am not mistaken, he is now off the board. He was a constituent of my colleague [Mr. TAGGART]. I do not know what motive or reason ruled the judgment of the Committee on Military Affairs. I do know that the members whose terms of office expired were two of them Democrats and two of them Republicans. The resolution which is offered here, for some strange reason differing from the ordinary rule, recommends three Republicans and one Democrat, and it does seem to me that a thing like that ought hardly go through this House by unanimous consent, although it might go through under other circumstances.

Mr. ANTHONY. Will the gentleman permit me to make a short statement for his information?

Mr. BORLAND. If the gentleman will permit me to make a slight amendment to the resolution, I shall be glad not to object.

Mr. ANTHONY. The board now consists of seven members, four of whom are Democrats and three of them Republicans. The Committee on Military Affairs think it would be entirely proper to allow another Republican to go on the board, which still gives the Democrats four members and the Republicans three. It does not interfere with the Democratic control of the board.

Mr. BORLAND. I realize, Mr. Chairman——

Mr. ANTHONY. There has never been any partisanship on that board.

Mr. BORLAND. I realize that that board formerly consisted of nine members. The Democrats are left with four members, and with a change in the political complexion of the House it would be quite possible to increase the number again to nine members, making it five Republicans and four Democrats. But I do not see any reason why, when there are two Democrats and two Republicans whose terms expire, we should bring in at this particular juncture a resolution recommending three Republicans and one Democrat, nor do I think that that resolution ought to go through by unanimous consent.

Mr. MANN. Does the gentleman remember the last resolution that passed?

Mr. BORLAND. The last resolution, if I recollect rightly, was the one when Maj. Warner——

Mr. MANN. Oh, no; the last resolution named all Democrats and no Republicans.

Mr. BORLAND. I do not recollect that.

Mr. MANN. The gentleman's memory is very capricious.

Mr. BORLAND. If so, it was a very much better resolution than this one.

Mr. HELVERING. The board previous to the present one were all Republicans and no Democrats.

Mr. BORLAND. If the gentleman from Kansas will permit me to make a slight amendment to that resolution, I shall be glad to withdraw my objection.

Mr. RAKER. I hope the gentleman will let it go over for two weeks.

Mr. DYER. The gentleman from Missouri has objected.

The SPEAKER. Is there objection?

Mr. BORLAND. Mr. Speaker, I object.

Mr. MANN. Let it go over until the next Congress, and then we will show you. [Laughter.]

The SPEAKER. The gentleman from Missouri objects.

Mr. ANTHONY. I ask unanimous consent to make a short statement.

The SPEAKER. The gentleman asks for three minutes. Is there objection?

There was no objection.

Mr. ANTHONY. I think the House is making a mistake in failing to fill these vacancies. The Committee on Military Affairs has considered the matter very carefully, and has done what it considered to be the fair thing. The gentleman from Illinois [Mr. CANNON] alluded to a very unpleasant incident which happened on that board within the last year, only he did not tell the whole story. Not only has the post fund, with which the member whom we are trying to supplant on that board had been intrusted, been looted to the extent of $47,000, but since that disclosure was made another incident has been brought to light where that same member of the board has violated the law by taking from an inmate of the hospital of one of the homes $300 of pension money against the law.

Mr. FERRIS. Why do they not prosecute him?

Mr. ANTHONY. I say it is hardly in comport with the dignity of the House in the face of such circumstances to refuse to supplant such a public official as that, and I am surprised that the gentleman from Missouri or any gentleman from Kansas should object to it.

Mr. BORLAND. Bring in a proper resolution, then.

Mr. HOWARD. How many indictments have been brought against this man?

Mr. ANTHONY. No indictments; but the board of managers has placed the whole affair in the hands of the Department of Justice, and it is up to the Attorney General to act.

Mr. BORLAND. If the committee will bring in a proper resolution, the House will agree to it, I am sure.

The SPEAKER. The gentleman from Missouri has objected.

Mr. CANNON. I ask unanimous consent for a minute.

The SPEAKER. The gentleman from Missouri has objected, and that is the end of that controversy. The gentleman from Illinois asks two minutes. Is there objection?

There was no objection.

Mr. CANNON. It has been stated that heretofore the action of the Republican Congress was partisan. I have some familiarity with the history of the National Soldiers' Home. Gen. Franklin held the responsible place as chairman of the board of managers for from 16 to 20 years. He was a valiant major general in the war for the Union, and a Democrat. He was succeeded by a New York judge, whose name now escapes me, who held the place as successor of Gen. Franklin for 8 or 10 years.

SEVERAL MEMBERS. Gen Black.

Mr. CANNON. No; Gen. Black was on the board, but this was a New York judge who succeeded Gen. Franklin, and held the place until his decease, and was an efficient official and a Democrat. Then he was succeeded by a Republican, Hon. James C. Wadsworth, and he was succeeded by the man who defaulted. That is all I desire to say in justice to the management of the National Soldiers' Home, in which, so far as I know and believe, there never has been a partisan administration under the Republicans.

TRANSFER OF RETIRED ARMY OFFICERS TO ACTIVE LIST.

The next business on the Unanimous Consent Calendar was the bill (H. R. 17424) authorizing transfer of certain retired Army officers to the active list.

The Clerk read the title to the bill.

The SPEAKER. Is there objection?

Mr. MOORE of Pennsylvania. I object.

Mr. MILLER of Delaware. Will the gentleman reserve his objection?

Mr. MOORE of Pennsylvania. I will reserve the objection.

Mr. MILLER of Delaware. Mr. Speaker, I ask unanimous consent that I may be permitted to proceed for eight minutes.

The SPEAKER. The gentleman from Dalaware asks unanimous consent to proceed for eight minutes. Is there objection?

There was no objection.

Mr. MILLER of Delaware. Mr. Speaker, this bill was introduced by the gentleman from Texas [Mr. McLEMORE] and has been reported by the Committee on Military Affairs. My interest in the matter is purely from the standpoint of the merits of the bill. It is a long story as to how I became interested in the bill of the gentleman from Texas. I have gone into every detail of it, because certain of my colleagues on this side were informally talking of the bill one day and I saw that they were badly and erroneously mistaken about the matter. This bill provides that five officers who took advantage of the so-called Panama Canal act, the act of March 4, 1915, which gave officers who had served a certain number of years on the Panama Canal the privilege of retiring, may be transferred to the active list, if the President nominates them and the Senate confirms the appointment, provided they are appointed within one year of this act becoming a law. Certain officers took advantage of the Panama act. It was perfectly proper, they had every right to do it under the law. It was passed for that purpose.

Mr. MOORE of Pennsylvania. Will the gentleman yield?

Mr. MILLER of Delaware. Certainly.

Mr. MOORE of Pennsylvania. Were these officers, any of them, educated at West Point or Annapolis?

Mr. MILLER of Delaware. Some of them were. In fact, I think all except the officer who is a chaplain were West Point graduates.

Mr. MOORE of Pennsylvania. They left the service for another opportunity that presented itself?

Mr. MILLER of Delaware. I am coming to that, the gentleman should not anticipate my remarks.

Mr. MOORE of Pennsylvania. The gentleman is speaking partly by my courtesy and I may reply to him.

Mr. MILLER of Delaware. I do not mean to be discourteous to the gentleman. In the letter of the Secretary of War, under date of December 4, 1916, to the chairman of the House Committee on Military Affairs, he has the following paragraph:

> The act making appropriations for the support of the Army for the fiscal year 1916 contains a provision authorizing the transfer to the active list of officers of the Army previously transferred to the retired list for physical disability, and provides that each officer so transferred be carried as an additional number and be given the place on the active list he would have had if he had not been retired. This act does not include officers who have been retired under the Panama Canal act, approved March 4, 1915, which deficiency in legislation the bill S. 6850 would remedy.

I submit that these officers who had every right under the law which you gentlemen passed here to retire could go into whatever profession they wanted to, notwithstanding the opinions to the contrary. I will be perfectly frank to the House and say to you that because certain of these gentlemen were employed by what is termed war-order factories—I do not know to which places they did go for employment—is no reason why, when the War Department and the Secretary of War says it is a good business investment for the United States Government to take them back, that they should be denied that right. To-day the particular officer in question which this bill will affect will draw down for the rest of his days $3,750 as retired pay of a colonel. I understand of the five affected only one desires to return.

Mr. MILLER of Minnesota. Will the gentleman yield?

Mr. MILLER of Delaware. Yes.

Mr. MILLER of Minnesota. Can the gentleman inform us whether any man affected by this act occupies what might be called a subordinate position in the construction of the Panama Canal—I do not refer to Gen. Goethals, but Gen. Siebold and Gen. Hodges. What was the grade and rank of these men?

Mr. MILLER of Delaware. Lieutenant colonel of ordnance, the next was a major, who was a chaplain, and the other three were captains.

Mr. MILLER of Minnesota. That was before we promoted them?

Mr. MILLER of Delaware. Under the Panama Canal act they could retire on the next higher grade. This bill provides that they shall go back to a grade lower than that they were retired on.

Mr. MILLER of Minnesota. The gentleman will remember that we promoted some men down there and denied it to others, which was a crime.

Mr. MILLER of Delaware. This bill provides that they must go back to the grade below the one they retired on. Now, they raise the point, and I will state that there is an amendment which was prepared in the War Department which provides that these men shall never be eligible to a grade higher than the one they are now holding as retired officers. For instance, one of the men is a colonel, retired as such, and he will go back and be a lieutenant colonel, but he can never be eligible for a grade higher than colonel. If he should go back and be eligible for a brigadier generalship some time, he could not be considered.

Mr. HOWARD. Will the gentleman yield?

Mr. MILLER of Delaware. Yes.

Mr. HOWARD. What is the reason for that? If you put a man back, why deprive him of the right of promotion under general military law?

Mr. MILLER of Delaware. If I was managing the matter, I would not consent, but nevertheless the War Department and the people most interested are willing for it to go in so as to remove all objection.

Mr. HOWARD. The gentleman knows that under the general rule of retirement a man is retired in the next higher grade. Now, then, these men hold this rank and they go back to their former rank, and then under that you propose to prevent them from ever receiving the promotion that they would have in the general promotion in the Army.

Mr. MILLER of Delaware. I will say that in this particular case if a man goes back as a lieutenant colonel he is eligible for colonel, but for no higher rank.

Mr. HOWARD. That is the very thing I am objecting to. If he is entitled to go back at all into the Army—and I agree with the gentleman from Delaware that we will only be paying a little more than he gets on the retired list if he is put on the active list and we will have his services—but if he goes back he ought to go back as a full-fledged officer with all the rights and immunities thereto pertaining.

Mr. TILSON. Will the gentleman yield?

Mr. MILLER of Delaware. Yes.

Mr. TILSON. Does the act allow him to again take advantage of the Panama Canal act?

Mr. MILLER of Delaware. In reply to the gentleman from Connecticut I will say there is a further proviso reported from the committee that any officer transferred to the active list under this act shall not again be entitled to the benefits of the Panama Canal act except for age or physical disability incurred in the line of duty.

I am only interested, as I say, because this seems to be one of those bills of real merit. Here is a man who will get retired pay for 16 years at the rate of $3,750 a year. During that time the Government can not get any official use of that man. If this bill is passed, he can go back into the Army. It will not hurt anybody because he goes back, and he will draw down for active work for 16 years a salary of $4,500 a year while a lieutenant colonel, or $5,000 a year if a colonel. I submit that when the War Department and the Secretary of War and the Bureau of Ordnance asks that this be done, and they all say that it is a good move, that we should consider it as merited legislation.

Mr. STAFFORD. Mr. Speaker, will the gentleman yield?

Mr. MILLER of Delaware. Yes.

Mr. STAFFORD. Why does not the bill provide that they shall be examined professionally before reinstatement, and let the examination be both medical and professional? Usually in the reinstatement of persons who have voluntarily retired, their reinstatement is conditional upon examination extending to their profession, as well as to medical fitness.

Mr. MILLER of Delaware. The bill provides such on page 2.

The SPEAKER. The time of the gentleman from Delaware has expired.

Mr. MILLER of Delaware. Mr. Speaker, I ask unanimous consent to proceed for five minutes more, in as much as I have yielded to interruptions.

The SPEAKER. Is there objection?

There was no objection.

Mr. GARLAND. Mr. Speaker, will the gentleman yield?

Mr. MILLER of Delaware. Yes.

Mr. GARLAND. I would like to ask the gentleman this question. These men, as I understand, were employed by some of the private munition factories, were they not?

Mr. MILLER of Delaware. I will say to the gentleman that one of them is a chaplain, so I do not see how the question of a munition factory could very well be raised. Two were so employed; the rest were not.

Mr. GARLAND. As a matter of fact, it is understood that some of these officers who went into the private munition factories failed in their duties, and the private manufacturers let them out. Does this bill apply to some of that kind? Do you expect them to go back without examination as to ability and be in the department and operate on the question of munitions for the United States Government?

Mr. MILLER of Delaware. I am very glad that the gentleman has raised that point. I can answer his query in the negative. This bill will only concern one man, because there is only one of the five who will take advantage of it. In regard

to what the gentleman from Pennsylvania [Mr. GARLAND] has said, I will say that the bill provides that the Senate must pass upon the confirmation of these men before they get back, and they must pass a medical examination.

Mr. CARAWAY. Mr. Speaker, will the gentleman yield?

Mr. MILLER of Delaware. I have been very patient, and I can not yield. I would like to cover a little bit of ground. I say that in all courtesy to the gentleman. It is merely gratuitous upon my part that I am presenting this case here to-day. It is nothing to me. I do not want the gentleman to take any offense, but what is the gentleman's question?

Mr. CARAWAY. I have no question.

Mr. MILLER of Delaware. Very well. I submit that a man who has rendered good service in the department, when the department wants him back, when there is nothing against his record, should be given the opportunity to come back. I can show by documents which I could introduce, if I had the time, that the man wanted to stay in the service of the United States, but that he left it because of the ill health of his wife on the Isthmus of Panama. That illness resulted in her death. Since her death he desires to come back into the service. I do not know what my friend from Pennsylvania, Mr. MOORE, with his legislative and parliamentary experience, is going to say about this bill, but I submit that whatever he does say, there is nothing that can be raised against this man as to his fitness, and as to the desire of the Secretary of War and the War Department to have him back, especially as his coming back will tread on nobody's toes, and especially as he must be confirmed first by the Senate. A bill (S. 6850) has already passed the Senate in this Congress, and is similar in every way to this one.

Mr. Speaker, I herewith append as a part of my remarks a copy of a letter sent by the Secretary of War to the chairman of the House Committee on Military Affairs, under date of December 4, 1916, as well as copy of a letter sent by the Chief of Ordnance, United States Army, both of which attest to the fairness and merit of this proposed legislation:

DECEMBER 4, 1916.

Hon. S. H. DENT,
Chairman Committee on Military Affairs,
House of Representatives, Washington, D. C.

MY DEAR MR. DENT: I wish to bring to your attention Senate bill 6850, which is the same as H. R. 17424, now on the Union Calendar.

The act making appropriations for the support of the Army for the fiscal year 1916 contains a provision authorizing the transfer to the active list of officers of the Army previously transferred to the retired list for physical disability, and provides that each officer so transferred be carried as an additional number and be given the place on the active list he would have had if he had not been retired. This act does not include officers who have been retired under the Panama Canal act approved March 4, 1915, which deficiency in legislation the bill S. 6850 would remedy.

Officers transferred to the active list under the present law have been advanced one or two grades in rank, whereas officers transferred under bill S. 6850 would return to the rank each held at the time of his retirement, or, as it happens, one grade lower than that held by each on the retired list.

The officers retired under the Panama Canal act were physically and mentally sound, well trained, and had had unusual experience for their age, and I consider it a good business proposition for the Government to obtain the active services of those who desire to return to the active list under the conditions of bill S. 6850.

One of the officers served 21 years in the Ordnance Department, and his return to the active list would help to meet a pressing shortage of experienced officers brought about by the increased burden placed upon that department through recent appropriation acts and by the loss of a number of such officers taken from the department by the inducements of private employment, which shortage could be relieved in no other prompt manner. There are now several demands for such an officer which there is no way of meeting.

I consider the enactment into law of bill S. 6850, as passed by the Senate on September 8, 1916, to be for the best interests of the Government.

Sincerely, yours,

NEWTON D. BAKER,
Secretary of War.

—

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ORDNANCE,
Washington, September 7, 1916.

Hon. THOMAS W. MILLER,
House of Representatives.

DEAR SIR: I have your letter of September 7, inquiring whether the bill H. R. 17424, current session, providing for the transfer of certain retired officers of the Army to the active list is of a personal character or might be considered as general legislation for the best interest of the Government. I am familiar with the bill, which would render eligible for restoration to the active list in the Ordnance Department an officer who was retired from active service in this department under the Panama Canal beneficiary act—Lieut. Col. T. C. Dickson. I officially advised the Secretary of War concerning the bill, and in doing so I stated to him that the restoration of Col. Dickson to active duty in this department would be greatly to the interest of the Government, in that it would help to meet a pressing shortage of experienced officers brought about by the increased burden placed upon the department through recent appropriation acts and by the loss of a number of such officers taken from the department by the inducements of private employment, which shortage could be relieved in no other prompt manner. I have now several demands for such an officer which I have no way of meeting.

Whatever personal character the proposed legislation may have is, to my mind, of no importance in comparison with the public interest which is involved.

Very respectfully,

WILLIAM CROZIER,
Brigadier General, Chief of Ordnance,
United States Army.

The SPEAKER pro tempore (Mr. BYRNS of Tennessee). Is there objection to the consideration of the bill?

Mr. MOORE of Pennsylvania. Mr. Speaker, reserving the right to object——

Mr. CARAWAY. Mr. Speaker, I object.

Mr. MOORE of Pennsylvania. I would like the attention of my friend from Arkansas for a moment. The gentleman from Arkansas could have some of my time if he desired it; but as the gentleman from Delaware [Mr. MILLER] has had 13 minutes upon this question and has directed some of his remarks to me, I think I ought to be permitted to reply.

Mr. CARAWAY. Mr. Speaker, I demand the regular order.

The SPEAKER pro tempore. The regular order is demanded. The Clerk will report the next bill on the calendar.

Mr. MILLER of Minnesota. Mr. Speaker, will not the gentleman withhold his objection for a moment?

Mr. CARAWAY. I will withhold it, but I am going to object.

Mr. MOORE of Pennsylvania. Mr. Speaker, I call the Speaker's attention to the fact that I did object to this bill, but reserved the objection so that the gentleman from Delaware [Mr. MILLER] might be heard; and, now that I have the floor, I am willing to object if the gentleman from Arkansas does not object.

Mr. SISSON. Mr. Speaker, the regular order was demanded.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. MOORE of Pennsylvania. Mr. Speaker, I object.

LAND PATENTS IN OREGON.

The next business on the Calendar for Unanimous Consent was the bill H. R. 17055, providing when patents shall issue to the purchasers or heirs on certain lands in the State of Oregon.

The SPEAKER pro tempore. Is there objection?

Mr. FERRIS. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection?

There was no objection.

CITIZENSHIP OF DIRECTORS IN BANKS ON STATE BORDER LINES.

The next business on the Calendar for Unanimous Consent was the bill S. 4256, to amend section 5146 of the Revised Statutes of the United States, so as to permit national banks located near the boundary line of adjoining States, subject to the discretion of the Comptroller of the Currency, to select only a majority, instead of three-fourths, of their directors from residents of the State in which they are respectively located.

The SPEAKER pro tempore. Is there objection to the consideration of the bill?

Mr. MANN. Mr. Speaker, reserving the right to object, I do not see the gentleman from Arkansas [Mr. WINGO] present at this time. I think some one ought to make a statement concerning the bill. I ask unanimous consent that the bill be passed over without prejudice.

The SPEAKER pro tempore. Is there objection?

There was no objection.

MISSOULA NATIONAL FOREST, MONTANA.

The next business on the Calendar for Unanimous Consent was the bill (S. 5082) adding certain lands to the Missoula National Forest, Montana.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. Mr. Speaker, I object.

The SPEAKER. The gentleman from Kentucky objects and the bill is stricken from the calendar.

Mr. EVANS. Mr. Speaker, I ask unanimous consent that the bill retain its place upon the calendar.

The SPEAKER. The gentleman asks unanimous consent that the bill be passed over without prejudice. Is there objection? [After a pause.] The Chair hears none.

PAYMENT UNDER HOMESTEAD ENTRIES, FORT PECK INDIAN RESERVATION, MONT.

The next business on the Calendar for Unanimous Consent was the bill (S. 5612) providing additional time for the payment of purchase money under homestead entries of lands within the former Fort Peck Indian Reservation, Mont.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. I object, Mr. Speaker.

The SPEAKER. The gentleman from Kentucky objects.

Mr. TAYLOR of Colorado. Mr. Chairman, I will ask the gentleman to reserve his objection for a moment.

Mr. JOHNSON of Kentucky. I will reserve the right to object.

Mr. TAYLOR of Colorado. Mr. Speaker, let me say this bill is for the relief of a large number of settlers in certain conditions up in Montana on the reservation, and that a very great hardship is being worked upon them. It is nothing to me personally, but it would relieve a lot of deserving people. I think the time ought to be extended so they will not lose their homes and have their lands forfeited, and the department has very earnestly recommended it, and I hope the gentleman will not insist upon his objection, because this a humane measure really and it does apply to a lot of deserving people. I hope the gentleman will let this bill go through.

Mr. JOHNSON of Kentucky. Mr. Speaker, it is getting late in the afternoon and this bill might go over as unfinished business and might not be considered on the next unanimous-consent day, and I object.

The SPEAKER. The gentleman from Kentucky objects.

Mr. TAYLOR of Colorado. Mr. Speaker, I ask unanimous consent that the bill retain its place on the calendar.

The SPEAKER. The gentleman from Colorado asks unanimous consent that the bill be passed over without prejudice. Is there objection? [After a pause.] The Chair hears none.

ADDITIONAL ENTRIES UNDER ENLARGED HOMESTEAD ACT.

The next business on the Calendar for Unanimous Consent was the bill (S. 1061) to allow additional entries under the enlarged homestead act.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. Mr. Speaker, I object.

Mr. TAYLOR of Colorado. Mr. Speaker, I ask unanimous consent that the bill retain its place on the calendar.

The SPEAKER. The gentleman from Colorado asks unanimous consent that the bill be passed over without prejudice. Is there objection? [After a pause.] The Chair hears none.

LANDS WITHIN FORMER FLATHEAD INDIAN RESERVATION, MONT.

The next business on the Calendar for Unanimous Consent was the bill (S. 1059) to provide for the payment for certain lands within the former Flathead Indian Reservation, in the State of Montana.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. STAFFORD. Mr. Speaker, I object.

The SPEAKER. The gentleman from Wisconsin objects.

Mr. RAKER. Mr. Speaker, I ask unanimous consent that the bill retain its place on the calendar.

The SPEAKER. The gentleman from California asks unanimous consent that the bill be passed over without prejudice. Is there objection? [After a pause.] The Chair hears none.

LANDS FOR RESERVOIR PURPOSES, TWIN FALLS, IDAHO.

The next business on the Calendar for Unanimous Consent was the bill (S. 5014) to amend section 1 of the act of August 9, 1912, providing for patents on reclamation entries, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. Mr. Speaker, I object.

Mr. SMITH of Idaho. Mr. Speaker, will the gentleman from Kentucky withhold his objection for a moment?

Mr. JOHNSON of Kentucky. I withhold the objection.

Mr. SMITH of Idaho. Mr. Speaker, this is a very worthy piece of legislation recommended by the Secretary of the Interior. There is no objection to it from any source by anyone informed as to its merits and I hope the gentleman will not object. It would not take two minutes to pass this bill, and it will certainly gratify me very much.

Mr. JOHNSON of Kentucky. Mr. Speaker, I object.

Mr. SMITH of Idaho. Mr. Speaker, I ask unanimous consent that the bill retain its place on the calendar.

The SPEAKER. The gentleman asks that the bill be passed over without prejudice. Is there objection? [After a pause.] The Chair hears none.

CERTAIN LANDS FOR RESERVOIR PURPOSES, TWIN FALLS, IDAHO.

The next business on the Calendar for Unanimous Consent was the bill (S. 1740) to repeal an act entitled "An act granting to the city of Twin Falls, Idaho, certain lands for reservoir purposes," approved June 7, 1912, and to revoke the grant made thereby.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. Mr. Speaker, I object.

Mr. MANN. Mr. Speaker, will the gentleman reserve his objection?

Mr. JOHNSON of Kentucky. I reserve the objection.

Mr. MANN. Mr. Speaker, this bill is so unusual in character that I think that it ought to pass with a little celebration. The city of Twin Falls, Idaho, got authority by special act of Congress to take certain public lands. Now, this bill proposes to revoke that, with their consent, it is true. It is such an unusual thing for us to take back public land that I do not think the gentleman from Kentucky, even under the unusual circumstances, ought to delay for a moment the passage of such a bill, and I hope he will not object to this.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. Mr. Speaker, I object.

The SPEAKER. The gentleman from Kentucky objects, and the bill is stricken from the calendar.

Mr. SMITH of Idaho. Mr. Speaker, I ask unanimous consent that this bill retain its place on the calendar.

The SPEAKER. The gentleman asks unanimous consent that this bill be passed over without prejudice. Is there objection? [After a pause.] The Chair hears none.

THE SALE AND DEVELOPMENT OF CERTAIN PUBLIC LANDS FOR THE CONSTRUCTION AND MAINTENANCE OF PUBLIC ROADS.

The next bill on the Calendar for Unanimous Consent was the bill (H. R. 11258) to provide for the sale and development of certain public lands and for the construction and maintenance of public roads.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

Mr. JOHNSON of Kentucky. Mr. Speaker, I object.

Mr. TAYLOR of Colorado. Mr. Speaker, I ask unanimous consent that the bill retain its place upon the calendar without prejudice.

The SPEAKER. The gentleman from Colorado asks unanimous consent that this bill be passed over without prejudice. Is there objection?

Mr. MANN. Mr. Speaker, I make the point of order there is no quorum present.

The SPEAKER. The Chair will count.

Mr. BARKLEY. Mr. Speaker, I move that the House do now adjourn.

The SPEAKER. The gentleman from Illinois makes the point of no quorum and the gentleman from Kentucky moves that the House adjourn.

The question was taken, and the Speaker announced the ayes seemed to have it.

Mr. RAKER. A division, Mr. Speaker.

The SPEAKER. The gentleman from California demands a division. The Chair will count.

The House divided; and there were—ayes 49, noes 39.

Mr. LONDON. Mr. Speaker, is it in order to call for tellers? I ask for tellers.

The SPEAKER. Does the gentleman demand tellers?

Mr. LONDON. I demand tellers.

The SPEAKER. Those in favor of taking this vote by tellers will rise and stand until they are counted. [After counting.] Thirty gentlemen have risen, not a sufficient number.

Mr. HOWARD. Mr. Speaker, I demand the yeas and nays.

Mr. BARKLEY. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. BARKLEY. Since learning of some matters that other gentlemen are interested in I withdraw my motion to adjourn.

Mr. MADDEN. I object.

The SPEAKER. The gentleman from Kentucky has a right to withdraw his motion.

Mr. MADDEN. Does the Speaker rule he has the right after the vote is taken and while the House is determining——

The SPEAKER. He has the right to withdraw it clear up to its finish.

Mr. RAGSDALE. Mr. Speaker, a majority having voted to adjourn, can the gentleman then come back and withdraw his motion to adjourn? The House has voted to adjourn.

The SPEAKER. The House has not finished the process of voting to adjourn.

Mr. RAGSDALE. A majority of the House has put itself in favor of adjourning.

The SPEAKER. Not a majority of the House.

Mr. RAGSDALE. A majority of those voting.

Mr. BARKLEY. Mr. Speaker, I withdraw the motion to adjourn.

Mr. HOWARD. Mr. Speaker, I withdraw my demand for the yeas and nays.

The SPEAKER. The gentleman from Georgia withdraws his demand for the yeas and nays. But the point of order is made

by the gentleman from Illinois [Mr. MANN] that there is no quorum here.

Mr. GARLAND. I make the motion that we now adjourn.

The SPEAKER. We want to get through with this other thing first. Did the gentleman from Illinois [Mr. MANN] withdraw his point of no quorum?

Mr. MANN. I did not. I wanted the whole House here to see the monkey work.

The SPEAKER. The Chair will count. [After counting.] One hundred and twelve Members are present, not a quorum.

Mr. KITCHIN. Mr. Speaker, I move a call of the House.

The motion was agreed to.

The SPEAKER. The Doorkeeper will close the doors, the Sergeant at Arms will notify the absentees, and the Clerk will call the roll.

The roll was called, and the following Members failed to answer to their names.

Adair	Drukker	Kahn	Pou
Aiken	Eagan	Kearns	Price
Bacharach	Edmonds	Keister	Reavis
Barnhart	Edwards	Kless, Pa.	Riordan
Beakes	Estopinal	Kreider	Roberts, Nev.
Beales	Farr	Lafean	Rowe
Benedict	Finley	Lenroot	Rowland
Bennet	Fitzgerald	Lesher	Rucker, Mo.
Bruckner	Flood	Lever	Russell, Ohio
Caldwell	Flynn	Lewis	Sabath
Callaway	Focht	Lieb	Sanford
Campbell	Foster	Liebel	Saunders
Cantrill	Gallagher	Lindbergh	Schall
Carew	Gallivan	Linthicum	Scott, Pa.
Carter, Mass.	Gardner, Mass.	Lobeck	Scully
Casey	Garrett	Loft	Sells
Chandler, N. Y.	Goodwin, Ark.	Longworth	Sherley
Chiperfield	Graham	McArthur	Sherwood
Cline	Griest	McCracken	Slayden
Coleman	Griffin	McDermott	Slemp
Conry	Hamill	McKinley	Steagall
Cooper, W. Va.	Hamilton, N. Y.	Maher	Steele, Pa.
Costello	Harrison, Miss.	Miller, Pa.	Swift
Crago	Hart	Mooney	Volstead
Cullop	Haskell	Morin	Watkins
Dale, N. Y.	Henry	Mudd	Watson, Pa.
Dale, Vt.	Hill	Nelson	Williams, Ohio
Darrow	Hinds	North	Wilson, Fla.
Davenport	Hulbert	Oglesby	Wilson, Ill.
Dewalt	Hutchinson	Page, N. C.	Winslow
Dooling	Igoe	Patten	Woods, Iowa
Driscoll	Jones	Peters	Woodyard

The SPEAKER. On this vote 304 Members—a quorum—have responded to their names.

Mr. KITCHIN. Mr. Speaker, I move to suspend further proceedings under the call.

The motion was agreed to.

The doors were opened.

The SPEAKER. The gentleman from North Carolina is recognized.

BATTLE FIELD OF GUILFORD COURT HOUSE, N. C.

Mr. STEDMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H. R. 8229) to establish a national military park at the battle field of Guilford Courthouse, as amended.

The SPEAKER. The Clerk will report the bill.

The Clerk read as follows:

A bill (H. R. 8229) to establish a national military park at the battle field of Guilford Courthouse.

Be it enacted, etc., That in order to preserve for historical and professional military study one of the most memorable battles of the Revolutionary War, the battle field of Guilford Courthouse, in the State of North Carolina, is hereby declared to be a national military park whenever the title to the same shall have been acquired by the United States; that is to say, the area inclosed by the following lines:

Those certain tracts or parcels of land in the county of Guilford and State of North Carolina, Morehead Township, more particularly described as follows:

First tract: Beginning at a stone on the west side of the Greensboro macadam road; thence north 86 degrees 5 minutes west 877.1 feet to a stone; thence north 7 degrees 55 minutes west 408.8 feet to a stone; thence north 7 degrees 5 minutes east 190.8 feet to a stone; thence north 60 degrees 45 minutes east 265.4 feet to a stone; thence north 14 degrees 15 minutes west 701.6 feet to a stone; thence north 8 degrees 45 minutes west 348.1 feet to a stone; thence north 71 degrees 35 minutes east 937.8 feet to a stone; thence south 50 degrees 45 minutes east 157.2 feet to a stone; thence north 70 degrees 45 minutes east 875.5 feet to a stone; thence north 27 degrees 28 minutes west 202.9 feet to a stone; thence north 27 degrees 8 minutes west 226.8 feet to a stone; thence north 69 degrees 45 minutes east 265.9 feet to a stone; thence north 68 degrees 50 minutes east 37.8 feet to a stone; thence south 53 degrees 50 minutes east 892 feet to a stone; thence south 83 degrees 20 minutes east 291.4 feet to a stone; thence south 29 degrees 20 minutes west 655.7 feet to a stone; thence south 12 degrees 55 minutes west 843 feet to a stone; thence about west 10 feet to a stone; thence south 6 degrees 5 minutes west 133.4 feet to a stone; thence north 60 degrees west 38 feet to a stone; thence north 49 degrees west 52.6 feet to a stone; thence north 87 degrees 10 minutes west 1,427.3 feet to a stone; thence north 12 degrees 40 minutes east 196.5 feet to a stone; thence south 71 degrees west 237.9 feet to a stone; thence south 3 degrees 55 minutes west 1,011.3 feet to the beginning.

Second tract: Beginning at a stone on the south side of Holt Avenue; thence south 9° 45′ west 109.8 feet to a stone; thence south 84° 45′ east 249 feet to a stone; thence northeasterly to Holt Avenue; thence with Holt Avenue north 87° 10′ west to the beginning, on which is located the Joe Spring.

Together with all privileges and appurtenances thereunto belonging.

The aforesaid tracts of land containing in the aggregate 125 acres, more or less, and being the property of the Guilford Battle Ground Co., according to a survey by W. B. Trogdon and W. B. Trogdon, jr., made June 8, 1911. And the area thus inclosed shall be known as the Guilford Courthouse National Military Park.

SEC. 2. That the establishment of the Guilford Courthouse National Military Park shall be carried forward under the control and direction of the Secretary of War, who is hereby authorized to receive from the Guilford Battle Ground Co., a corporation chartered by the State of North Carolina, a deed of conveyance to the United States of all the lands belonging to said corporation, embracing 125 acres, more or less, and described more particularly in the preceding section.

SEC. 3. That the Secretary of War is hereby authorized and directed to acquire at such times and in such manner such additional lands adjacent to the Guilford Courthouse National Military Park as may be necessary for the purposes of the park and for its improvement.

SEC. 4. That the affairs of the Guilford Courthouse National Military Park shall, subject to the supervision and direction of the Secretary of War, be in charge of three commissioners, to be appointed by him, one of whom shall be a resident of Guilford County, State of North Carolina; such resident commissioner shall be chairman of the board so appointed and shall also act as secretary of the commission. Said commissioners shall have an office in the city of Greensboro, State of North Carolina, and shall be paid such compensation as the Secretary of War shall deem reasonable and just, not to exceed, however, $2,000 per annum for the resident commissioner and $1,500 each per annum for the nonresident commissioners.

SEC. 5. That it shall be the duty of the commission named in the preceding section, under the direction of the Secretary of War, to open or repair such roads as may be necessary to the purposes of the park, and to ascertain and mark with historical tablets or otherwise, as the Secretary of War may determine, all lines of battle of the troops engaged in the Battle of Guilford Courthouse and other historical points of interest pertaining to the battle within the park or its vicinity; and the said commission in establishing this military park shall also have authority, under the direction of the Secretary of War, to employ such labor and services and to obtain such supplies and material as may be necessary to the establishment of said park, under such regulations as he may consider best for the interest of the Government, and the Secretary of War shall make and enforce all needed regulations for the care of the park.

SEC. 6. That it shall be lawful for any State that had troops engaged in the battle of Guilford Courthouse to enter upon the lands of the Guilford Courthouse National Military Park for the purpose of ascertaining and marking the lines of battle of its troops engaged therein: *Provided*, That before any such lines are permanently designated the position of the lines and the proposed methods of marking them, by monuments, tablets, or otherwise, shall be submitted to and approved by the Secretary of War; and all such lines, designs, and inscriptions for the same shall first receive the written approval of the Secretary of War, which approval shall be based upon formal written reports, which must be made to him in each case by the commissioners of the park.

SEC. 7. That if any person shall, except by permission of the Secretary of War, destroy, mutilate, deface, injure, or remove any monument, column, statues, memorial structures, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy or remove any fence, railing, inclosure, or other work for the protection or ornamentation of said park, or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, brush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees growing or being upon said park, or hunt within the limits of the park, any person so offending and found guilty thereof before any justice of the peace of the county of Guilford, State of North Carolina, shall, for each and every such offense, forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than $5 nor more $50, one-half for the use of the park and the other half to the informer, to be enforced and recovered before such justice in like manner as debts of like nature are now by law recoverable in the said county of Guilford, State of North Carolina.

The SPEAKER. The gentleman from North Carolina moves to suspend the rules and pass the bill. Is a second demanded?

Mr. MANN. I demand a second.

Mr. STEDMAN. Mr. Speaker, I ask unanimous consent that a second be considered as ordered.

The SPEAKER. The gentleman from North Carolina asks unanimous consent that a second be considered as ordered. Is there objection?

There was no objection.

The SPEAKER. The gentleman from North Carolina is recognized for 20 minutes and the gentleman from Illinois [Mr. MANN] will be recognized for 20 minutes.

Mr. STEDMAN. Mr. Speaker, this bill has received a favorable report from the Committee on Military Affairs. There would seem to be no reason why it should not receive the unanimous vote of the House. It provides that the battle field of Guildford Court House shall be made a national military park whenever the title to the same shall have been acquired by the United States. The area so to be conveyed embraces 125 acres, more or less, and is now owned by the Guilford Battle Ground Co., a corporation organized by a distinguished North Carolinian, Hon. David Schenck, whose early days were spent under the shadow of Kings Mountain, and whose natural instinct of love for the heroic was later in life intensified by a residence amongst people who had inherited by tradition the great deeds of their fathers.

The battle field is even now very attractive and beautiful. It is adorned by many monuments to the memory of Revolutionary heroes, some of them of rare beauty. Amongst others is the

statue of Gen. Nathanael Greene, presented to the Guilford Battle Ground Co. by the United States. The expense incurred by the Government will be small.

The bill provides that the military park so created shall, subject to the supervision and direction of the Secretary of War, be in charge of three commissioners to be appointed by him, one of whom shall be a resident of Guilford County, State of North Carolina. Said resident commissioner shall be chairman of the board so appointed and shall also act as secretary of the commission. Said commissioners shall have an office in the city of Greensboro, State of North Carolina, and shall be paid such compensation as the Secretary of War shall deem reasonable and just, not to exceed, however, $2,000 per annum for the resident commissioner and $1,500 each per annum for the nonresident commissioners.

All property conveyed to the Government by the Guilford Battle Ground Co. will be absolutely unencumbered. There will be no indebtedness to be provided for. All expenses hitherto have been met by subscriptions made by private citizens, and assistance has been rendered to a moderate extent by the State of North Carolina. I think there was an appropriation of $750 made by the legislature of that State several times. I can not be accurate as to how often this appropriation has been made. So it will be seen that the expense has been reduced to a minimum.

In its consequences the Battle of Guilford Court House was of transcendent importance to our Revolutionary fathers. Upon that battle field was given the blow which staggered the power of the British Empire, made the surrender of Cornwallis at Yorktown an inevitable necessity, insured the independence of the Colonies, and laid the foundation of a Republic whose beneficent example and teachings should be felt to the uttermost ends of the earth.

It is of the highest importance to every nation that the memories of the great deeds of its children should be preserved and transmitted from generation to generation. Such is the chief object of this bill. Its passage is demanded by every impulse of patriotism and would be greeted by the people of our entire country with high approval.

The SPEAKER. The gentleman from North Carolina reserves the remainder of his time, 15 minutes. The gentleman from Illinois [Mr. MANN] is recognized for 20 minutes.

Mr. MANN. Mr. Speaker, I can see one very strong and powerful argument in favor of this bill, and that is the distinguished and beloved Member of this House from North Carolina, Gen. STEDMAN. [Applause.]

There are a very great many propositions made to Congress constantly, and a very large number are now pending in Congress for the purchase of various sites to create national parks in commemoration of battles in which other heroes of the past engaged and a great many other places. However, what I want to do is not to discuss the general proposition of the purchase of battle grounds but some of the details of this bill, a discussion which, if it does not have any effect on this bill, as I hope it might, may have some effect on the committee which reports such bills or on the gentleman who presents the next bill to the House.

The affairs of this military park, under the terms of the bill, shall be in charge of three commissioners to be appointed by the Secretary of War, one of whom shall be a resident of Guilford County, State of North Carolina, which resident commissioner shall be chairman of the board so appointed and also secretary of the board so appointed. It provides that he shall receive $2,000 a year salary. He is the resident local commissioner; he is made chairman of the board; he is made secretary of the board—Poo Bah, I think, is the expression. Then there are two other commissioners, to draw $1,500 each for staying away. That is pure graft. There is absolutely not the slightest excuse for providing for two nonresident commissioners to draw $1,500 each when they have nothing to do. The local commissioner, who is to get $2,000, is to be the chairman of the board. He is to be the secretary of the board. He is to be the whole thing, and the other two positions are sinecures. I do not know whether it is a very good time just now for our Democratic friends to be creating sinecure positions at $1,500 each. I have read in the papers that another distinguished body which sometimes believes that it is greater in importance than this body does not even propose to permit any increase in the salary of anybody in the Government service, and there is some merit in that proposition; but I would far rather increase the salary of some of the Government employees who are not getting high salaries than to create two sinecure positions to be held by two Democrats or Republicans of importance, to do nothing except draw their salaries. [Applause on the Republican side.]

There is another provision of this bill to which I wish to call attention. I do not propose to detain the House very long. There are a number of provisions in this bill that I would like to discuss, but there is one in particular. We have passed a number of laws in reference to the committing of crimes and misdemeanors in national parks, and have provided methods for enforcing the law. This bill provides that if anyone does damage in the park, in various ways described, it shall be a misdemeanor which shall be prosecuted before the local justice of the peace in Guilford County, and for each and every such offense shall forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, not less than $5 nor more than $50, one half for the use of the park and the other half to the informer. Well, in the first place, I doubt the advisability of giving a justice of the peace in Guilford County original and final jurisdiction over some misdemeanor committed in this park. In the second place, I doubt the advisability of Congress entering upon the scheme of paying the informer one-half the penalty. Years ago that was the law of the United States in a great many cases. Informers were invited to begin prosecutions. But those laws have been repealed.

Mr. STEDMAN. Will the gentleman yield?

Mr. MANN. Certainly.

Mr. STEDMAN. I will say to the gentleman from Illinois that I am perfectly willing to ask unanimous consent to change the maximum limit of the salaries of the nonresident commissioners. The provision of the bill is not exactly as the gentleman states it. The salaries are not fixed at $1,500, but they are not to exceed, $1,500, to be fixed by the Secretary of War. I do not desire to have them exceed $500, and I ask unanimous consent to modify the bill in that way, to make the salaries of the nonresident commissioners not to exceed $500.

Mr. MANN. I think that would be a very good modification, I will say to the gentleman, and I am not going to object to it.

Mr. STEDMAN. I ask unanimous consent to do that.

The SPEAKER. The gentleman from Illinois has the floor. The Chair will recognize the gentleman from North Carolina [Mr. STEDMAN] at the conclusion of his remarks.

Mr. MANN. I do not believe we ought to encourage informers anywhere by the payment of money to them. We have some penalties now, where we pay the informer when we obtain information of violation of the immigration laws, and we put a specific provision in the appropriation bill to that effect. It may be necessary sometimes to do that, but it ought not to be the law of the United States that we hire informers to bring prosecutions for cutting the branch of a tree. In this case the man who picks a leaf off of a tree out of idle curiosity or interest may have somebody bring him up and cost him a penalty, to go to the informer. Now, there are a good many other things in this bill that I would like to correct; but, of course, I know fairly well the temper of this House and am usually able to guess, in a way, when I am up against it.

I reserve the balance of my time, and yield to the distinguished gentleman from North Carolina.

Mr. STEDMAN. I ask unanimous consent to amend my motion, and instead of $1,500 for the salaries of the two commissioners I ask to make it $500. I ask unanimous consent to make that modification.

Mr. MADDEN. Reserving the right to object, I wish to ask the gentleman from North Carolina if it might not be wise to make one commissioner, the resident commissioner, the entire commission; why not have one man?

Mr. STEDMAN. That was considered very carefully by the Committee on Military Affairs. I know a good deal about that myself. There ought to be three commissioners, one who ought to be from Rhode Island, as Gen. Greene commanded the Revolutionary forces there. We went over the whole matter and decided that there ought to be three commissioners.

Mr. NORTON. Will the gentleman yield?

Mr. STEDMAN. Certainly.

Mr. NORTON. Does not the gentleman from North Carolina think that two nonresident members of this commission could be secured for less than $500 a year? What I had in mind was about $5 a year, but perhaps $50 would be more appropriate.

Mr. STEDMAN. I think that a man who has enough character and is responsible enough to be a commissioner for one of the great parks comprising a battle field of the Revolutionary War, considering the responsibilities connected with it, and who, for instance, should reside in Rhode Island, ought to have at least $500 to pay any expenses that might be necessary in connection with the office.

The SPEAKER. The gentleman from North Carolina asks unanimous consent to modify the bill by an amendment, which the Clerk will report.

The Clerk read as follows:

Page 5, line 17, strike out "$1,500" and insert "$500."

Mr. BURNETT. Will the gentleman yield?

Mr. STEDMAN. Certainly.

Mr. BURNETT. Is there any provision in the bill for the payment of the expenses of these commissioners?

Mr. STEDMAN. No; there is no provision of that sort, and no expense connected with it.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. STEDMAN. Mr. Speaker, I yield five minutes to the gentleman from Illinois [Mr. CANNON].

Mr. CANNON. Mr. Speaker, I have visited this battle ground during the past summer. If I recollect right, there was a small appropriation made for the purpose of marking the lines in whole or in part and erecting monuments. I believe that this expenditure ought to be made, as the bill proposes. [Applause.] From history, as well as somewhat from tradition that I have received from time to time, this was one of the most important battles of the Revolution.

Perhaps I feel more than an ordinary interest in this appropriation. The battle ground of Guilford Court House is about 5 miles from Greensboro. There is a Friends settlement, that was made in 1720 or 1725, near the site of this battle ground at New Garden. The immigration was largely from Nantucket. Many families, the Coffins, the Maceys, the Starbucks, and many other families were early settlers at New Garden. Perhaps some of them in Greensboro. There was a very large immigration from North Carolina to Ohio, Indiana, Illinois, and across the continent, especially of Moravians and Quakers and Scotch-Irish, from the central and especially the western part of the State.

I grew up in a settlement substantially on the Wabash of North Carolinians. They used to meet in the log houses of the settlers, way back within my recollection, during the long winter nights and talk about North Carolina. The most of them were Whigs, especially the Friends. In 1840 John Motley Morehead was elected governor on the Whig ticket of the State of North Carolina. The most of that North Carolina settlement supported him and believed him to be a man of high character and great enterprise, who perhaps founded whatever there was in industries, outside of agriculture, in North Carolina at Greensboro. The conversation was concerning the old North State, and largely about Gov. Morehead.

I recollect asking my father after they had gone from the house one long winter evening as I had sat and listened there—I said, "Daddy, when we die will we go to Gov. Morehead?" [Laughter.] It is wonderful, but those immigrants, not only Friends, but those who were not Friends or Quakers who came to Illinois and Indiana, first to Ohio, and so on across the continent, were of sterling worth. I never knew a North Carolinian that was a receiver of public or private charity or that did not pay his debts and who was not a good ctiizen. [Applause.] They made their mark not only in Indiana but clear across the continent. A Member of this House was born on the Wabash and his forbears were from Guilford County. I refer to the gentleman from Washington [Mr. HADLEY]. Ex-Gov. Hadley, of Missouri, was of that stock. The Coffins held high positions, many of them industrially and otherwise, in various States in the Northwest territory. S. V. White, who was formerly a Member of the House, for a long time a resident of and, I believe, a citizen of the State of New York, eminent as a business man, was from that county.

Mr. Speaker, North Carolina has a great history. They used to call it the Botany Bay State. I once asked why they called it the Botany Bay State, and the answer came—and to the best of my knowledge I have verified the truth of it—that as a colony or as a State there never was imprisonment for debt there. I think there is no imprisonment for debt now in any State of the Union, and in the absence of fraud there should not be.

Mr. Speaker, I believe it is for the benefit of the oncoming generation in North Carolina and throughout the country that this battle ground should be marked. After all, there is much in sentiment. You may say away with sentiment, but after all is said and done, sentiment well founded lies at the very base of our civilization. [Applause.] Without detaining the House further, I trust that this motion may prevail without a dissenting voice in this great body. [Applause.]

Mr. STEDMAN. Mr. Speaker, I yield three minutes to the gentleman from Ohio [Mr. FESS].

Mr. FESS. Mr. Speaker, I think that we have been just a little reluctant as a Nation to preserve permanently the tablets of American history. We are too prone to efface the records, and when an opportunity is offered us to make a national park, under the protection of the National Government, of the battle ground which proved to be the turning point of the struggle that ultimately led to our independence, we ought to do it. The Battle of Guilford Court House was fought just about six months before the inevitable surrender at Yorktown. This defeat was the preliminary step to the final surrender and the close of the war. It was the battle that cleared up the struggles further in the South to await Yorktown. It was led by the man who is known in history to have never gained a victory, but whose each and every defeat was equivalent to a victory, and that man, great in his military career, rests in this famous battle ground. I think that from the standpoint of the meaning of the Revolutionary War, which President Seeley said the English people had agreed voluntarily never to mention more often than they were compelled to, we should pass this proposed measure. Knowing that the war planted the greatest Republic the world has yet seen, and knowing also that it struck from the first phase of that Republic, as it first appeared after 1763 and before the Revolutionary War, certain effete elements which had been fastened upon it, such as the feudal system, the law of primogeniture, the law of entail, life tenure in office, hereditary government, and other things, such as taxation without representation, and this being one of the battle fields of that war and one which was fought just before the close of the great struggle, we ought to here and now make it a national military park under the control of the National Government. [Applause.]

Mr. STEDMAN. Mr. Speaker, I yield three minutes to the gentleman from Iowa [Mr. TOWNER].

Mr. TOWNER. Mr. Speaker, I am glad that this bill, introduced by the gentleman from North Carolina [Mr. STEDMAN], is to meet with no considerable opposition in the House. Not alone because its passage is especially desired by the gentleman whom we have all learned to love and honor, but because of its intrinsic merits. A proposition to establish a national military park at the battle field of Guilford Courthouse, in order to preserve for historical and military study one of the most memorable battles of the Revolutionary War, is in every respect commendable, and should be approved by all those who believe that patriotism can be inspired and strengthened by the reservation and preservation of the great battle grounds of the Republic.

Gentlemen of the House will remember that after the surrender of Burgoyne at Saratoga the campaign of the British in the northern colonies seemed to pause. The British cabinet finally determined to carry the war into the southern colonies. Savannah, the capital of Georgia, was captured after an ineffectual resistance and was made the base of further opertions. Sir Henry Clinton proceeded to invest Charleston, the principal port and city of the South. The combined attack of the British fleet and army was successful, and Charleston was forced to surrender. This left the way open for the complete conquest as the British planned, of the Carolinas, Georgia, and finally Virginia and Maryland.

Washington fully realized the danger of such a campaign. The forces of the colonies in the South were small and scattered. They were poorly equipped. The British had been largely reinforced and were placed under the command of Lord Cornwallis, one of the ablest of the British commanders. Washington appointed Gen. Gates, the hero of Saratoga, to the command of the southern army and sent him with such forces as could be secured to stop the British advance. A battle was fought at Camden, and the colonists were disastrously defeated.

Cornwallis advanced into North Carolina, boasting that he would soon conquer all the territory south of the Susquehanna River. He sent his subordinates throughout the country to subdue and reduce the revolutionists. One of his ablest officers, Maj. Ferguson, with a large command penetrated into the mountains. He was met by the mountaineers under the command of Shelby, Sevier, Cleaveland, McDowell, Campbell, and Williams, and at the battle of King's Mountain the British force was utterly defeated and destroyed.

Upon learning of this defeat Cornwallis withdrew into South Carolina and there concentrated and reinforced his army. To meet the new offensive which Cornwallis planned and which was certainly formidable and might be determinative was supremely important.

It was evident that with the Carolinas and Georgia in the hands of the British defense of Virginia was difficult. The fate of the war and the cause of the Colonies now seemed dependent on the preservation of the South. Another loss like that of Charleston, another disaster like that of Camden would have

been irreparable. It was felt by Washington, it was realized by Congress that there was but one man equal to the emergency, and that man was Gen. Nathanael Greene.

Gen. Greene was appointed, and at once commenced to organize and equip an army. This appeared an almost impossible undertaking. The colonists were without money or credit. Their armies already in the field were poorly armed, were not even comfortably clothed, they were underfed, and had not been paid. The resources of the Colonies seemed practically exhausted. It was necessary for Greene to create an army, to equip it, and to train it.

When Greene took command in the field he found that his effective force numbered little over 2,000 men. He was largely outnumbered by the British force. Under these conditions it was unwise to give battle until his force could be strengthened. But reenforcements must come from the North. He resolved to move his little army as rapidly as possible to northern North Carolina, and to avoid a battle until he could meet the British on at least equal terms. In order to accomplish this with greatest safety, he adopted the daring plan of dividing his forces, placing one half in command of Gen. Morgan and retaining the command of the other half himself. This compelled Cornwallis to divide his forces and assume the offensive. He sent Gen. Tarleton to attack Morgan, while with his remaining forces he swiftly followed Greene.

Tarleton and Morgan met at the Cowpens, and in the battle which there occurred the British were defeated with great loss.

In a masterly retreat of over 200 miles Greene succeeded in reaching his objective point, and was able there to concentrate his forces and receive his expected reenforcements from Virginia. He resolved to give battle and selected Guilford Courthouse as the place to meet Cornwallis.

The battle was admirably managed by both commanders and stubbornly fought. At its conclusion the British held the field, but with the loss of one-third of their number. Cornwallis's position was untenable, and he was forced to retreat pursued by Greene. The British reached Wilmington in safety, and Greene at once returned to South Carolina to carry on a campaign which finally drove the British into Charleston, there to remain until the close of the war. A distinguished historian says:

Among all the campaigns of history that have been conducted with small armies there have been few, if any, more brilliant than Greene's.

Although he never won a distinctive victory, after each of his battles it was the enemy who retreated and he who pursued.

The Battle of Guilford Courthouse, as can readily be seen, was the culmination of the southern campaign. It was the prelude to Yorktown, Cornwallis's surrender, and the final victory of the Colonists. It was a campaign in which the honors were divided between the North and the South.

When the southern invasion by the British began the southern Delegates in Congress asked that Gen. Lincoln, who had distinguished himself in northern campaigns, be sent South and placed in command. This was done, and for 15 months Lincoln kept the field. For 30 days he defended Charleston against the combined forces of Arbuthnot and Clinton. Finally Lincoln was forced to surrender.

Then Gen. Gates, the commander at Saratoga, was placed in command of the southern armies. "Take care not to exchange your northern laurels for southern willows," was the warning given Gates by Charles Lee. The defeat of Gates at Camden made the warning a prophecy.

After these disheartening experiences the Colonists, as we have seen, turned to the ablest and most trusted of Washington's generals—Nathanael Greene. Greene was born in Rhode Island in 1742. He was the son of a Quaker preacher, but he was an ardent patriot. He became convinced that independence must be achieved if American liberty was to be preserved. This meant war. Notwithstanding his faith and pacific environment, he began the study of military tactics and history. He organized and drilled militia companies. When the news came of Lexington the Assembly of Rhode Island authorized the organization of a brigade and placed Greene in command. He soon joined Washington, and for nearly five years served with him. He was soon recognized as a military genius. Washington depended on him as on no other of his generals. No one except Washington himself so held the confidence of the troops.

After the war Greene settled in the South, for which he had acquired a great affection. He died there at the early age of 44 years, and is there buried. Alexander Hamilton, in an address on his life and public service, said:

In forming our estimate of his character we are not left to supposition or conjecture. We have a succession of deeds as glorious as they are unequivocal to attest his greatness and perpetuate the honors of his name.

Great as was the value of Greene's service in this southern campaign, success could not have been secured without the aid of a number of brilliant and daring commanders who aided him.

Among these were three Virginians of remarkable ability—Daniel Morgan; William Washington, who was a distant cousin of the commander in chief; and Henry Lee, familiarly known as "Light Horse Harry," father of the great general, Robert E. Lee.

Names ever dear to the lovers of the heroic and the romantic are those of Thomas Sumter and Francis Marion. Names which recall not only patriotic service but thrilling deeds of desperate adventure, surprises at midnight, sudden attacks in the gray twilight of the morning, lurking places in the depths of the forests, and long marches under the silent stars. Nothing in fiction exceeds in wonder or interest the marvelous stories of their exploits. Sumter and Marion will ever remain among the favorite characters of American history.

I have already alluded to the mountaineer commanders who won the battle of Kings Mountain. The record of their heroic exploits would make an interesting story never so far adequately told. Their history and exploits should be recorded as an act of justice to those able and daring leaders, and as an incentive to heroic deeds throughout the years to come.

Mr. Speaker, it is well to recall those heroic days. It is well to recount those heroic deeds. We do not live in heroic times. But the spirit of 1776 is not yet died out in American manhood, and we must not smother it with our materialism and our commercialism.

It is for these reasons that I am glad of an opportunity to support the present bill. I sincerely hope that it may pass this body and become a law.

The SPEAKER. The question is on suspending the rules and passing the bill.

The question was taken; and in the opinion of the Chair two-thirds having voted in favor thereof, the rules were suspended and the bill was passed.

HOUR OF MEETING TO-MORROW.

Mr. KITCHIN. Mr. Speaker, I ask unanimous consent that when the House adjourns to-day it adjourn to meet at 11 o'clock to-morrow.

The SPEAKER. The gentleman from North Carolina asks unanimous consent that when the House adjourns to-day it adjourn to meet at 11 o'clock to-morrow. Is there objection? [After a pause.] The Chair hears none.

Mr. LONDON. Mr. Speaker, I move to suspend the rules and pass House joint resolution 250.

The SPEAKER. The gentleman from New York moves to suspend the rules and pass House joint resolution 250.

Mr. MANN. Mr. Speaker, I make the point of order that there is no quorum present.

The SPEAKER. The Chair will count.

Mr. KITCHIN. Mr. Speaker, I move that the House do now adjourn.

The SPEAKER. The gentleman from Illinois makes the point of order there is no quorum present, and the gentleman from North Carolina moves that the House do now adjourn.

ADJOURNMENT.

Accordingly the motion was agreed to; and (at 5 o'clock and 18 minutes) the House adjourned to meet to-morrow, Tuesday, January 16, 1917, at 11 o'clock a. m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1. A letter from the Secretary of the Treasury, transmitting copy of communication from the Secretary of Labor submitting an estimate of appropriation to enable the Secretary of Labor to carry into effect the provisions of the act entitled "An act to prevent interstate commerce in the products of child labor" (H. Doc. No. 1939); to the Committee on Appropriations and ordered to be printed.

2. A letter from the Secretary of the Treasury, transmitting copy of communication from the Secretary of the Interior submitting a supplemental estimate of appropriation for completion of installation of a hydroelectric power plant in Yosemite National Park, Cal. (H. Doc. No. 1940); to the Committee on Appropriations and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several calendars therein named, as follows:

Mr. CLINE, from the Committee on Foreign Affairs, to which was referred the bill (H. R. 20047) for the control and regulation of the waters of Niagara River above the Falls, and for other purposes, reported the same without amendment, accompanied by a report (No. 1292), which said bill and report were referred to the House Calendar.

Mr. FERRIS, from the Committee on the Public Lands, to which was referred the resolution (H. Res. 418) authorizing certain members of the committee on the Public Lands of the House of Representatives to make investigation relative to natural resources of the public domain, reported the same without amendment, accompanied by a report (No. 1293), which said resolution and report were referred to the Committee of the Whole House on the state of the Union.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. COPLEY: A bill (H. R. 20112) for the erection of a public building at Woodstock, Ill.; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 20113) to acquire a site for a public building at Harvard, Ill.; to the Committee on Public Buildings and Grounds.

By Mr. MOORE of Pennsylvania: A bill (H. R. 20114) designating October 27 of each year a legal holiday to be known as National Fraternal Day, to conserve the home, fraternalism, and happiness; to the Committee on the Judiciary.

By Mr. SMITH of New York: A bill (H. R. 20115) for the control, regulation, and use of the waters of the Niagara River below Niagara Falls, and for other purposes; to the Committee on Foreign Affairs.

By Mr. KETTNER: A bill (H. R. 20116) to provide for an auxiliary reclamation project in connection with the Yuma project, California; to the Committee on Irrigation of Arid Lands.

By Mr. CAMPBELL: Resolution (H. Res. 446) providing for an investigation regarding whether persons connected with the Government profited by fluctuations in the stock market growing out of advance information as to executive actions; to the Committee on Rules.

By Mr. DAVIS of Texas: Resolution (H. Res. 449) to amend the rules of the House of Representatives; to the Committee on Rules.

By Mr. HARRISON of Mississippi: Joint resolution (H. J. Res. 339) amending first paragraph of section 6 of Article I of the Constitution of the United States; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ASHBROOK: A bill (H. R. 20117) granting a pension to George W. Cordray; to the Committee on Pensions.

By Mr. BENEDICT: A bill (H. R. 20118) granting an increase of pension to Edward Pfeifer; to the Committee on Invalid Pensions.

By Mr. BOWERS: A bill (H. R. 20119) for the relief of Jacob Kesner; to the Committee on Military Affairs.

By Mr. BYRNES of South Carolina (by request): A bill (H. R. 20120) granting a pension to Jeter Cornwell; to the Committee on Pensions.

By Mr. CALDWELL: A bill (H. R. 20121) granting a pension to Helen Larsen; to the Committee on Pensions.

By Mr. CAMPBELL: A bill (H. R. 20122) granting an increase of pension to Julia Pugh; to the Committee on Invalid Pensions.

By Mr. COADY: A bill (H. R. 20123) for the relief of the East End Loan & Savings Association, of Baltimore, Md.; to the Committee on Claims.

Also, a bill (H. R. 20124) for the relief of sundry building and loan associations; to the Committee on Claims.

By Mr. COLLIER: A bill (H. R. 20125) granting a pension to Rachael S. Dobbs; to the Committee on Pensions.

By Mr. DALLINGER: A bill (H. R. 20126) granting a pension to Isaac H. Griffith; to the Committee on Invalid Pensions.

By Mr. EMERSON: A bill (H. R. 20127) granting a pension to J. R. Hunter; to the Committee on Pensions.

By Mr. GILLETT: A bill (H. R. 20128) for the relief of the widow of Edward Kelly; to the Committee on Military Affairs.

By Mr. GODWIN of North Carolina: A bill (H. R. 20129) granting a pension to Clyde C. Dickinson; to the Committee on Pensions.

By Mr. GOOD: A bill (H. R. 20130) for the reimbursement of Parnell M. Cameron; to the Committee on Claims.

By Mr. HAMLIN: A bill (H. R. 20131) granting an increase of pension to Cassius M. Myers; to the Committee on Invalid Pensions.

By Mr. HERNANDEZ: A bill (H. R. 20132) granting a pension to Harry Owen; to the Committee on Pensions.

By Mr. KEY of Ohio: A bill (H. R. 20133) granting an increase of pension to Simon C. Bennett; to the Committee on Invalid Pensions.

By Mr. McCULLOCH: A bill (H. R. 20134) granting an increase of pension to Israel Dunn; to the Committee on Invalid Pensions.

By Mr. MORGAN of Oklahoma: A bill (H. R. 20135) granting a pension to John E. Jamison; to the Committee on Pensions.

By Mr. NORTH: A bill (H. R. 20136) granting an increase of pension to George W. Shaw; to the Committee on Invalid Pensions.

By Mr. RODENBERG: A bill (H. R. 20137) granting a pension to Marie M. Meyer; to the Committee on Invalid Pensions.

By Mr. ROUSE: A bill (H. R. 20138) granting an increase of pension to William H. Hindman; to the Committee on Invalid Pensions.

By Mr. SLAYDEN: A bill (H. R. 20139) to appoint James H. Biggar a captain on the retired list of the Army; to the Committee on Military Affairs.

By Mr. SNELL: A bill (H. R. 20140) granting an increase of pension to Dudley B. Call; to the Committee on Invalid Pensions.

By Mr. SPARKMAN: A bill (H. R. 20141) for the relief of William R. Bozeman; to the Committee on Claims.

Also, a bill (H. R. 20142) for the relief of Charles H. Wilson; to the Committee on Claims.

By Mr. TAGGART: A bill (H. R. 20143) granting an increase of pension to John Whelchel; to the Committee on Invalid Pensions.

Also, a bill (H. R. 20144) granting an increase of pension to Perry H. Hayes; to the Committee on Invalid Pensions.

Also, a bill (H. R. 20145) granting an increase of pension to Horace Standish; to the Committee on Invalid Pensions.

Also, a bill (H. R. 20146) granting an increase of pension to Lucy A. Hetherington; to the Committee on Invalid Pensions.

Also, a bill (H. R. 20147) granting a pension to Susan Lautzenheiser; to the Committee on Invalid Pensions.

By Mr. TAYLOR of Colorado: A bill (H. R. 20148) for the relief of certain desert-land entrymen; to the Committee on the Public Lands.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER: Petition of sundry rural carriers of the ninth district of Missouri, asking for equipage allowance and equitable compensation in salaries; to the Committee on the Post Office and Post Roads.

By Mr. BRUCKNER: Petition of Henry B. Jay, of Detroit, in re preparedness; to the Committee on Military Affairs.

Also, petition of Michael A. Smith, of New York, in favor of Tague bill; to the Committee on Agriculture.

Also, memorial of American Association of State Highway Commissioners, in re topographic map of United States; to the Committee on Interstate and Foreign Commerce.

Also, petition of sundry citizens and firms of New York, against prohibition bills; to the Committee on the District of Columbia.

Also, memorial of Piel Bros., of New York, against Senate bill 4429; to the Committee on the Post Office and Post Roads.

Also, memorial of the Pictorial Review Co., in re increased second-class postage rates; to the Committee on the Post Office and Post Roads.

Also, memorial of Troy Chamber of Commerce, in re river and harbor improvements; to the Committee on Rivers and Harbors.

Also, petition of citizens of New York, protesting against practice of polygamy and asking for legislation prohibiting same; to the Committee on the Judiciary.

Also, memorial of Nation Society, Daughters of the American Revolution, favoring purchase of Monticello; to the Committee on Public Buildings and Grounds.

Also, memorial of Brooklyn Civic Club, in re pneumatic-tube service; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of New York, in re Post Office appropriation bill; to the Committee on the Post Office and Post Roads.

By Mr. BURKE: Petition of the six rural mail carriers of West Bend, Wis., petitioning that the Post Office appropriation bill be amended so as to provide that rural mail carriers serving a route longer than a standard route be granted an increase in salary at the same ratio above $1,200 as now applies to routes of less than 24 miles; to the Committee on the Post Office and Post Roads.

Also, petition that all rural mail carriers be granted an allowance for maintenance of equipment, etc., and that the time element be eliminated as it applies to serving rural routes; to the Committee on the Post Office and Post Roads.

By Mr. CANNON: Petition of sundry citizens of Illinois, favoring legislation excluding liquor advertisements from the mails; to the Committee on Interstate and Foreign Commerce.

By Mr. CARY: Petition of Business Men's Association of Watertown, Wis., inclosing resolutions unanimously adopted protesting against legislation pertaining to railway mail clerks; to the Committee on the Post Office and Post Roads.

Also, petition of Milwaukee Grain for Feed Co., protesting against the passage of House bill 18196, House joint resolution 84, House bill 17850, and Senate bills 4429 and 1082; to the Committee on the Judiciary.

Also, resolutions adopted by Mauston Commercial Club, of Mauston, Wis., in re legislation affecting railway postal clerks; to the Committee on the Post Office and Post Roads.

Also, petition of W. B. Bruckner, president Milwaukee Lodge, Fraternal Order of Eagles, protesting against passage of section 10 of Post Office appropriation bill; to the Committee on the Post Office and Post Roads.

Also, petition of Insurance Federation of Wisconsin, protesting against rider on Post Office appropriation bill; to the Committee on the Post Office and Post Roads.

Also, memorial of the Packer, of Kansas City, Mo., opposing increase in second-class postage rates; to the Committee on the Post Office and Post Roads.

Also, memorial of Select and Common Councils of Philadelphia and the Chamber of Commerce of the State of New York, in re pneumatic-tube service; to the Committee on the Post Office and Post Roads.

Also, petition of sundry citizens, against prohibition measures; to the Committee on the Judiciary.

By Mr. COADY: Protest of 5,000 citizens of Maryland against prohibition; to the Committee on the Judiciary.

By Mr. DALE of New York: Memorial of Albany Chamber of Commerce, in re bridge across Hudson River; to the Committee on Military Affairs.

Also, memorial of Brooklyn Civic Club, in re pneumatic-tube service; to the Committee on the Post Office and Post Roads.

Also, memorial of Order of Washington, in re legislation affecting immigration; to the Committee on Immigration and Naturalization.

By Mr. DAVIS of Texas: Memorial of the executive board of the Baptist General Convention, in re preaching in military camps; to the Committee on Military Affairs.

By Mr. DOOLING: Memorial of the Crockery Board of Trade of New York in re pneumatic-tube service; to the Committee on the Post Office and Post Roads.

Also, memorial of Brooklyn Civic Club and Chamber of Commerce of the State of New York, in re pneumatic-tube service; to the Committee on the Post Office and Post Roads.

By Mr. DOWELL: Petition of residents of Truro, Iowa, favoring the passage of the constitutional prohibition amendment; to the Committee on the Judiciary.

Also, petition of residents of Nevada, Iowa, favoring the passage of the constitutional prohibition amendment; to the Committee on the Judiciary.

Also, resolution relative to education of aliens in civic government and that the use of the surplus of naturalization funds should be used for that purpose; to the Committee on Immigration and Naturalization.

By Mr. DRUKKER: Petition of citizens of Moorestown, N. J., in favor of woman suffrage; to the Committee on the Judiciary.

By Mr. EAGAN: Petition of employees of the engravers' division, Bureau of Printing and Engraving, for increase in salaries; to the Committee on Appropriations.

Also, petition of sundry citizens opposing prohibition bills; to the Committee on the Judiciary.

Also, petition of Letitia Keiser, of Hohokus, N. J., for woman suffrage; to the Committee on the Judiciary.

By Mr. ELSTON: Protest of Berkeley (Cal.) Committee, against compulsory military training; to the Committee on Military Affairs.

By Mr. McFADDEN: Protest from S. W. E. Kingsley, president Fraternal Order of Eagles, Towanda, Pa., against section 10 of the Post Office appropriation bill providing for rate of postage by the zone system on newspapers and magazines; to the Committee on the Post Office and Post Roads.

Also, petition of John W. Deeming, of Pleasant Mount; W. M. Stephens, of Rummerfield; George E. Carey, of South Montrose; W. E. Brown, of Hopbottom; L. R. Davis, of Warren Center; Leon C. Burroughs, of Milan; B. R. Kinne, of Wyalusing; Burton L. Ely, Frank H. Sechler, George M. Palmer, Benjamin R. Lyons, Willis L. Bailey, and Olin B. Tingley, all of Montrose; Richard T. Bird, of Overton; and David Lake, of Pleasant Mount, all in the State of Pennsylvania, asking favorable consideration of a bill to fix the compensation of carriers upon an equitable and specific basis; to the Committee on the Post Office and Post Roads.

Also, petition from sundry citizens of Canton, Pa., protesting against the manipulation of the prices of food products; to the Committee on Interstate and Foreign Commerce.

By Mr. FULLER: Petition of American Association of Creamery Butter Manufacturers, for 1-cent letter postage; to the Committee on the Post Office and Post Roads.

Also, petition of Joseph Van Allen, of Waterville, Kans., for House bill 18531, concerning proof of widowhood in pension cases; to the Committee on Invalid Pensions.

Also, petition of Philadelphia Chamber of Commerce, opposing the abandonment of the pneumatic-tube mail service; to the Committee on the Post Office and Post Roads.

Also, petition of Marsden G. Scott, president of International Typographical Union, protesting against the zone system and increase of rate on second-class mail matter; to the Committee on the Post Office and Post Roads.

By Mr. GALLIVAN: Memorial of Union Label Trade Department of the American Federation of Labor, opposing prohibition measures; to the Committee on the Judiciary.

By Mr. GRIFFIN: Petitions of numerous and sundry citizens of New York, favoring 1-cent drop-letter postage; to the Committee on the Post Office and Post Roads.

Also, petitions of numerous citizens, organizations, and firms, opposing increase in second-class postage rates; to the Committee on the Post Office and Post Roads.

By Mr. HERNANDEZ: Papers to accompany bill for relief of Henry Owen; to the Committee on Pensions.

By Mr. HILL: Memorial of Hartford Chamber of Commerce, of Hartford, Conn., in favor of Federal control of railways; to the Committee on Interstate and Foreign Commerce.

Also, memorial of Chamber of Commerce of Hartford, Conn., in favor of universal military training; to the Committee on Military Affairs.

By Mr. KAHN: Petitions signed by 42 residents of the city of San Francisco, Cal., protesting against the enactment of House bill 18986 and Senate bill 4429, mail-exclusion bills; Senate bill 1082, District of Columbia prohibition bill; House joint resolution 84, nation-wide prohibition bill; and House bill 17850, to prohibit commerce in intoxicating liquors between the States; to the Committee on the Post Office and Post Roads.

By Mr. LINTHICUM: Petition of sundry citizens of Maryland, opposing Kenyon-Sims bill; to the Committee on Interstate and Foreign Commerce.

Also, petitions of sundry citizens of Maryland, opposing prohibition measures; to the Committee on the Judiciary.

Also, petition of E. P. Murray, of Baltimore, Md., favoring prohibition in the District of Columbia; to the Committee on the District of Columbia.

Also, memorial of Montgomery Farmers' Club, opposing embargo on foodstuffs; to the Committee on Interstate and Foreign Commerce.

Also, petition of Alman Machinery Co., of Baltimore, Md., favoring 1-cent postage; to the Committee on the Post Office and Post Roads.

Also, petitions of Baltimore Bargain House and Adpress, both of Baltimore, Md., opposing House bill 18986; to the Committee on the Post Office and Post Roads.

Also, petitions of numerous citizens of Maryland, opposing prohibition in the District of Columbia without a referendum being held; to the Committee on the District of Columbia.

By Mr. MOORES of Indiana: Petition signed by 552 citizens of city of Indianapolis, Ind., protesting against the passage of House bills 17850, 18986, and House joint resolution 82; to the Committee on the Judiciary.

By Mr. NORTH: Petitions of Punxsutawney Aerie, No. 1231, Fraternal Order of Eagles, representing 225 members; of Freeport Aerie, No. 1732, Fraternal Order of Eagles, representing 110 members; of Blairsville Aerie, Fraternal Order of Eagles, representing 68 members; of Ford City Aerie, No. 606, Fraternal Order of Eagles, representing 256 members; and of East Brady Aerie, Fraternal Order of Eagles, representing 75 members, all in the State of Pennsylvania, protesting against the provisions in the Post Office appropriation bill which seeks to apply the zone system to newspapers, magazines, and periodicals, and which changes the rates of postage on such mail matter; to the Committee on the Post Office and Post Roads.

Also, petition of 17 rural mail carriers of the twenty-seventh congressional district of Pennsylvania, petitioning for an allowance for rural mail carriers for equipment, maintenance, and increase in salary for serving routes longer than a standard route, in the same ratio as reductions are made for serving routes shorter than a standard route; to the Committee on the Post Office and Post Roads.

By Mr. OAKEY: Petition of citizens of New Britain, Conn., opposing mail-exclusion and prohibition bills now before Congress; to the Committee on the Judiciary.

By Mr. REILLY: Petitions of citizens of Manitowoc, Wis., opposing House bill 18986, Randall mail-exclusion bill; Senate bill 4429, Bankhead mail-exclusion bill; Senate bill 1082, Sheppard District of Columbia prohibition bill; House joint resolution 84, Webb nation-wide prohibition bill; and House bill 17850, Howard bill, to prohibit commerce in intoxicating liquors between the States; to the Committee on the Judiciary.

Also, petitions of citizens of Manitowoc, Wis., opposing House bill 18986, Randall mail-exclusion bill; Senate bill 4429, Bankhead mail-exclusion bill; Senate bill 1082, Sheppard District of Columbia prohibition bill; House joint resolution 84, Webb nation-wide prohibition bill; and House bill 17850, Howard bill, to prohibit commerce in intoxicating liquors between the States; to the Committee on the Judiciary.

By Mr. TAGUE: Memorial of Boston Wool Trade Association in re freight rates on wool; to the Committee on Interstate and Foreign Commerce.

Also, memorial of Brotherhood of Maintenance of Way Employees in re working of Adamson eight-hour law; to the Committee on Interstate and Foreign Commerce.

Also, memorial of Massachusetts State Legislature, relative to old-age pensions; to the Committee on Rules.

By Mr. WILLIAMS of Ohio: Petition of 120 citizens of Akron, Ohio, protesting against the passage of Randall mail-exclusion bill, Bankhead mail-exclusion bill, Sheppard District of Columbia prohibition bill, Webb nation-wide prohibition bill, and Howard bill to prohibit commerce in intoxicating liquors between the States; to the Committee on the Judiciary.

By Mr. YOUNG of North Dakota: Petition of John M. Joos, of Eckelson, N. Dak., and 24 others, favoring the increase of salaries of rural mail carriers; to the Committee on the Post Office and Post Roads.

SENATE.

TUESDAY, *January 16, 1917.*

(Legislative day of Monday, January 15, 1917.)

The Senate reassembled at 12 o'clock m., on the expiration of the recess.

Mr. GALLINGER. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from New Hampshire suggests the absence of a quorum, and the Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bankhead	Fall	Kenyon	Overman
Brady	Fernald	La Follette	Page
Brandegee	Fletcher	Lewis	Phelan
Bryan	Gallinger	Lippitt	Pittman
Chamberlain	Hitchcock	Lodge	Poindexter
Chilton	Hollis	McCumber	Ransdell
Clapp	Hughes	Martine, N. J.	Reed
Clark	Husting	Myers	Robinson
Colt	James	Nelson	Saulsbury
Culberson	Johnson, Me.	Norris	Shafroth
Curtis	Jones	Oliver	Sheppard
Sherman	Sterling	Thompson	Walsh
Smith, Ga.	Stone	Tillman	Watson
Smith, Md.	Sutherland	Townsend	Weeks
Smith, S. C.	Swanson	Vardaman	Williams
Smoot	Thomas	Wadsworth	Works

Mr. WATSON. I was requested to announce the unavoidable absence of the Senator from Ohio [Mr. HARDING].

Mr. VARDAMAN. I desire to announce the unavoidable absence of the Senator from Oklahoma [Mr. GORE], who is detained at his home on account of illness. I will let this announcement stand for the day.

Mr. CLAPP. I was requested to announce the unavoidable absence of the Senator from Arizona [Mr. ASHURST], the Senator from South Dakota [Mr. JOHNSON], the Senator from North Dakota [Mr. GRONNA], and the Senator from Oregon [Mr. LANE] on work of the Senate.

Mr. OVERMAN. I wish to announce that my colleague [Mr. SIMMONS] is absent on account of sickness. I ask that this statement may stand for the day.

Mr. CHILTON. My colleague [Mr. GOFF] is absent on account of illness. I will let this announcement stand for the day.

The PRESIDENT pro tempore. Sixty-four Senators have answered to their names. There is a quorum present.

LEGISLATIVE, ETC., APPROPRIATIONS.

Mr. OVERMAN. I ask the Senator from Montana if he will not lay aside the water-power bill that we may take up the legislative, executive, and judicial appropriation bill?

Mr. WALSH. Will the Senator indicate how long it will take?

Mr. OVERMAN. It ought to be finished in two or three hours. I think I have a right to call up the appropriation bill.

Mr. WALSH. How long did the Senator say?

Mr. OVERMAN. It ought not to take over two or three hours. That is my judgment, but I can not tell. The appropriation bill is ready to be taken up, and, with the Senator's consent, I will ask unanimous consent that the Senate proceed to its consideration.

Mr. WALSH. I ask unanimous consent, on the suggestion of the Senator from North Carolina, that House bill 408, the unfinished business, be temporarily laid aside for the purpose of considering the bill suggested by the Senator from North Carolina.

The PRESIDENT pro tempore. The Senator from Montana asks unanimous consent that the bill under consideration be temporarily laid aside. Is there objection? The Chair hears none, and it is so ordered.

Mr. OVERMAN. I ask unanimous consent that the Senate proceed to the consideration of House bill 18542, the legislative, executive, and judicial appropriation bill.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 18542) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1918, and for other purposes, which had been reported from the Committee on Appropriations with amendments.

Mr. OVERMAN. I ask that the formal reading of the bill be dispensed with, that it be read for amendment, and that the committee amendments be first considered.

The PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

The Secretary proceeded to read the bill.

The first amendment of the Committee on Appropriations was, under the head of "Legislative," subhead "Senate," on page 8, after line 3, to strike out:

For compiling the Navy Yearbook for the calendar year 1916, under the direction of the chairman of the Committee on Naval Affairs, $500.

The amendment was agreed to.

The next amendment was, on page 11, after line 1, to insert:

For rent of warehouse for storage of public documents, $1,800.

The amendment was agreed to.

The next amendment was, on page 11, after line 11, to insert:

Senate resolutions Nos. 421, Sixty-third Congress, second session, 561, Sixty-third Congress, third session, and 101, Sixty-fourth Congress, first session, are hereby repealed.

The amendment was agreed to.

The next amendment was, at the top of page 20, to strike out:

Clerk hire, Members and Delegates: To pay each Member, Delegate, and Resident Commissioner, for clerk hire, necessarily employed by him in the discharge of his official and representative duties, $2,000 per annum, in monthly installments, $880,000, or so much thereof as may be necessary; and Representatives and Delegates elect to Congress whose credentials in due form of law have been duly filed with the Clerk of the House of Representatives, in accordance with the provisions of section 31 of the Revised Statutes of the United States, shall be entitled to payment under this appropriation: *Provided*, That all clerks to Members, Delegates, and Resident Commissioners shall be placed on the roll of employees of the House and be subject to be removed at the will of the Member, Delegate, or Resident Commissioner by whom they are appointed; and any Member, Delegate, or Resident Commis-